

9-20-2011

Johnson v. State Clerk's Record v. 2 Dckt. 38769

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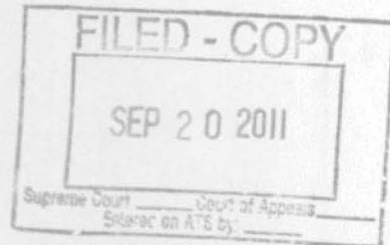
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Vol. 2 of 9

IN THE SUPREME COURT OF THE STATE OF IDAHO

SARAH M. JOHNSON,)
)
Petitioner/Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)

Supreme Court No.
38769-2011



RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE G. RICHARD BEVAN, DISTRICT JUDGE

Dennis A. Benjamin
ATTORNEY AT LAW
P.O. Box 2772
Boise, Idaho 83701

STATE ATTORNEY GENERAL
CRIMINAL APPEALS
P. O. Box 83720
Boise, ID 83720-0010

Attorney for Petitioner/Appellant

Attorney for Respondent

38769

VOLUME 2 of 7

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

SARAH M. JOHNSON,)	
	)	Supreme Court No.
Petitioner/Appellant,)	
	)	38769-2011
vs.)	
)	
STATE OF IDAHO,)	
)	
Respondent.)	

RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE G. RICHARD BEVAN, DISTRICT JUDGE

STATE APPELLATE PUBLIC
DEFENDER'S OFFICE
3647 Lake Harbor Lane
Boise, Idaho 83703

STATE ATTORNEY GENERAL
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P. O. Box 83720
Boise, ID 83720-0010

Attorney for Petitioner/Appellant

Attorney for Respondent

VOLUME 2 of 7

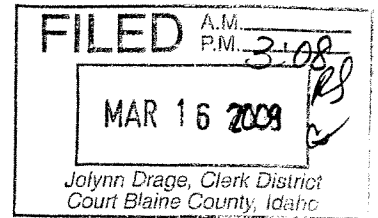
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Motion to Take Judicial Notice of Court Files	3-16-09	335

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-06-324
Petitioner,)	
)	
vs.	)	MOTION FOR
	)	APPOINTMENT OF
STATE OF IDAHO,	)	PSYCHIATRIC EXPERT
	)	AT COUNTY EXPENSE
<u>Respondent.</u>)	

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Motion for Appointment of Psychiatric Expert at County Expense and in support thereof states as follows;

1. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a fire arm enhancement. Said conviction and sentence were upheld on direct appeal.
2. Counsel was appointed to represent Petitioner pursuant to the Blaine County Public Defender Contract. Based upon said contract counsel moved for appointment of a separate District Judge to administer the financial aspects of the matter in so far as the public's liability for Petitioner's litigation costs.

3. Counsel for Petitioner previously filed a Motion for Appointment of an investigator, and a Motion for Appointment of Co-Counsel, at County Expense. Said motions were denied as open ended, undefined and unnecessary, at that time.

4. Subsequent to filing the original motions for professional assistance in presenting Petitioner's Post-Conviction Relief application, counsel has fully apprised himself of the contents of the record, the proceedings during the underlying criminal trial and the issues to be presented and tried in the Post-Conviction Relief Case pending under Case No. CV-06-324.

5. Counsel for Petitioner, in addition to a complete review of the record, has interviewed and re-established communications with Dr. Richard Worst, the psychiatric expert retained in the underlying criminal prosecution, for purposes of sentencing, as well as having conducted independent research relating to presentation of a psychiatric defense in the underlying criminal prosecution.

6. Dr. Richard Worst is a Board Certified Forensic Psychiatrist who would testify that parricide is very rare, particularly among girls, and is statistically close to non-existent among girls who have not been physically and or sexually abused, nor diagnosed with Schizophrenia, Bipolar Disorder, Substance Abuse, or significant mental retardation.

7. Counsel for Petitioner has discovered, and asserted in an Amended Petition for Post-Conviction Relief, that Trial Counsel was aware of the well known scientific literature but failed to pursue and present a defense that included expert psychiatric testimony which would have informed the jury that a double patricide-matricide, is an incredibly rare phenomena, and rarer still with a girl of tender years, such as the Petitioner, who has not been physically and sexually abused, nor diagnosed with severe

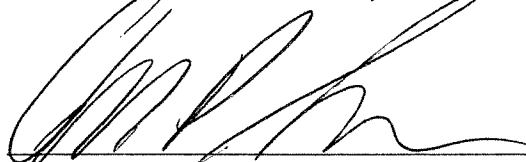
mental illness, thereby creating reasonable doubt, and a substantial likelihood of a verdict of not guilty.

8. Dr. Worst has given freely of his professional time to apprise counsel of background facts but will require compensation to produce a proper affidavit and prepare and testify at the trial on Petitioner's application for Post-Conviction Relief.

9. Dr. Worst's usual and customary rate for provision of professional service is \$250 per hour, and he estimates that he would require no more than 50 hours of time to provide the necessary services herein, for a total dollar amount of no more than \$12,500.00.

WHEREFORE, Defendant prays this honorable Court in its Order Appointing an expert in Forensic Psychiatry, specifically Dr. Richard Worst, herein at County Cost.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.13.09
DATED

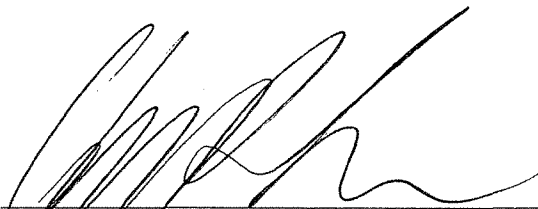
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of MARCH, 2009, a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF PSYCHIATRIC EXPERT AT COUNTY EXPENSE was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

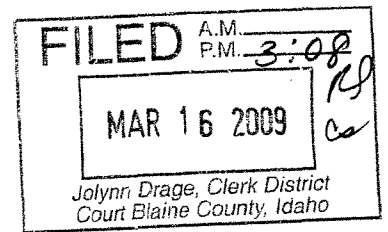
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-06-324
Petitioner,)	
)	
vs.	)	AMENDED MOTION FOR
	)	APPOINTMENT OF
STATE OF IDAHO,	)	INVESTIGATOR
	)	AT COUNTY EXPENSE
<u>Respondent,</u>)	

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Amended Motion for Appointment of Investigator at County Expense and in support thereof states as follows;

1. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a fire arm enhancement. Said conviction and sentence were upheld on direct appeal.
2. Counsel was appointed to represent Petitioner pursuant to the Blaine County Public Defender Contract. Based upon said contract counsel moved for appointment of a separate District Judge to administer the financial aspects of the matter in so far as the public's liability for Petitioner's litigation costs.

3. Counsel for Petitioner previously filed a Motion for Appointment of an investigator, and a Motion for Appointment of Co-Counsel, at County Expense. Said motions were denied as open ended, undefined and unnecessary, at that time.

4. Subsequent to filing the original motions for professional assistance in presenting Petitioner's Post-Conviction Relief application, counsel has fully apprised himself of the contents of the record, the proceedings during the underlying criminal trial and the issues to presented and tried in the Post-Conviction Relief Case pending under Case No. CV-06-324.

5. Counsel for Petitioner interviewed and re-established communications with Pat Dunn, the primary investigator employed during underlying criminal matter, and Robert Kerchusky, the fingerprint expert who testified for the defense at trial.

6. Both Mr. Dunn and Mr. Kerchusky have given freely of their professional time to apprise counsel of background facts, and displayed an ongoing working knowledge of the facts of the case as presented at trial, and facts which have arisen since conviction of the underlying criminal charges.

7. The services of an investigator, and specifically Pat Dunn, are required to effectively present Petition's Post-Conviction Relief Application in the following respects;

- a. The Amended Petition for Post-Conviction Relief alleges that trial counsel was chronically unprepared to interrogate witnesses at trial, based upon Dunn's knowledge and preparation of trial witness books for trial counsel.
- b. The Amended Petition for Post-Conviction Relief alleges that Trial Counsel failed to move for mistrial when it was discovered that Deputy

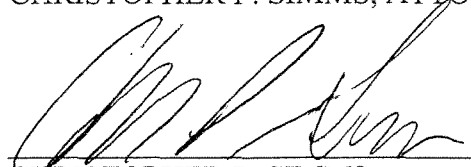
Prosecuting Attorney Whatcott had personal interactive contact, culminating in co-habitation, with a juror, the extent of which is not completely known but deserves investigation in pursuit of newly discovered evidence to verify Petitioner received due process of law and was afforded a fair trial.

- c. New evidence has been discovered, due to the persistent uncompensated effort of Robert Kerchusky, showing that previously unidentified fingerprints found on instruments of the crime, namely a bullet box insert containing .264 ammunition, a rifle scope, and an unspent .264 round, have been identified as matching the known fingerprints of one Christopher Kevin Hill. Further investigation of Mr. Hill's involvement with the crime is warranted to preserve Petitioner's right to due process of law.
- d. Review existing investigative reports and documents for further documentary proof of the allegations of fact made in the Affidavit of Patrick Dunn, and in the First Amended Petition for Post-Conviction Relief.

8. Mr. Dunn's usual and customary rate for provision of professional service is \$50.00 per hour, and he estimates that he would require no more than 50 hours of time to provide the necessary services herein, for a total dollar amount of no more than \$2,500.00

WHEREFORE, Defendant prays this honorable Court in its Order Appointing Investigator herein at County Cost.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



3.13.09

CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

DATED

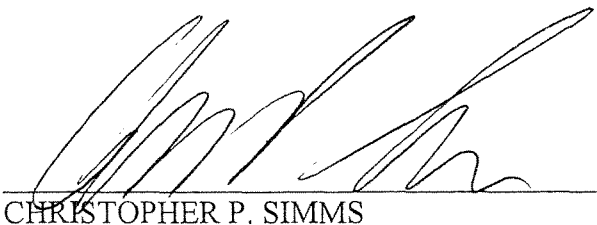
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of MARCH, 2009, a true and correct copy of the foregoing MOTION FOR ORDER OF DISCOVERY RELATING TO NEWLY DISCOVERED EVIDENCE was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

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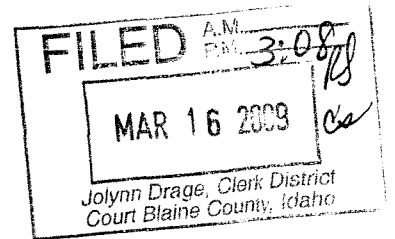
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-06-324
Petitioner,)	
)	
vs.	)	MOTION FOR
	)	APPOINTMENT OF
STATE OF IDAHO,	)	FINGERPRINT EXPERT
	)	AT COUNTY EXPENSE
<u>Respondent.</u>)	

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Motion for Appointment of Fingerprint Expert at County Expense and in support thereof states as follows;

1. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a firearm enhancement. Said conviction and sentence were upheld on direct appeal.
2. Counsel was appointed to represent Petitioner pursuant to the Blaine County Public Defender Contract. Based upon said contract counsel moved for appointment of a separate District Judge to administer the financial aspects of the matter in so far as the public's liability for Petitioner's litigation costs.

3. Counsel for Petitioner previously filed a Motion for Appointment of an investigator, and a Motion for Appointment of Co-Counsel, at County Expense. Said motions were denied as open ended, undefined and unnecessary, at that time.

4. Subsequent to filing the original motions for professional assistance in presenting Petitioner's Post-Conviction Relief application, counsel has fully apprised himself of the contents of the record, the proceedings during the underlying criminal trial and the issues to presented and tried in the Post-Conviction Relief Case pending under Case No. CV-06-324.

5. Counsel for Petitioner interviewed and re-established communications with Robert Kerchusky, the fingerprint expert who testified for the defense at trial.

6. Mr. Kerchusky has given freely of his professional time to apprise counsel of background facts, and displayed an ongoing working knowledge of the facts of the case as presented at trial, and facts which have arisen since conviction of the underlying criminal charges.

7. The services of Robert Kerchusky, fingerprint expert, are required to effectively present Petition's Post-Conviction Relief Application in the following respects;

- a. New evidence has been discovered, due to the persistent uncompensated effort of Robert Kerchusky, showing that previously unidentified fingerprints found on instruments of the crime, namely a bullet box insert containing .264 ammunition, a rifle scope, and an unspent .264 round, have been identified as matching the known fingerprints of one Christopher Kevin Hill.

b. Kerchusky has, to date without compensation, provided his invaluable fingerprint expertise and knowledge of this case to counsel including the information contained on the attached affidavit, which sworn facts have been included in the Amended Petition for Post-Conviction Relief, several of which demand ongoing fingerprint expertise, including trial testimony, and specifically as follows;

i. Petitioner requires a fingerprint expert to review and provide opinion regarding the latent to latent print review now being undertaken by the State, and high quality copies of all latent prints found at the scene, as previously ordered by this Court.

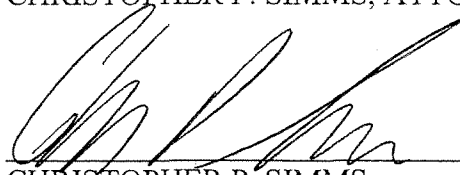
ii. Petitioner requires a fingerprint expert to review and provide opinion regarding the newly discovered match for previously unknown latent prints found at the scene of the crime, produced by AFIS and confirmed by a State Latent Fingerprint Technician.

8. Mr. Kerchusky's usual and customary rate for provision of professional service is \$ 75 per hour, and he estimates that he would require no more than 50 hours of time to provide the necessary services herein, for a total dollar amount of no more than \$3,750.

9. The Blaine County Public Defender Contract, Article II, paragraph 2.3 addresses additional services and expenses. The contract does not directly address appointment of an investigator. A copy of said Contract is attached hereto and made a part hereof.

WHEREFORE, Defendant prays this honorable Court in its Order Appointing fingerprint expert, Robert Kerchusky, at County Cost.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



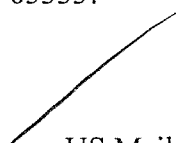
CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.13.09

DATED

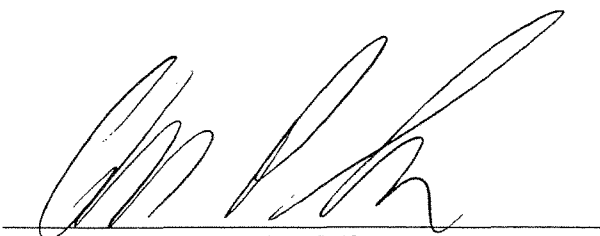
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of MARCH, 2009, a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF FINGERPRINT EXPERT AT COUNTY COST was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

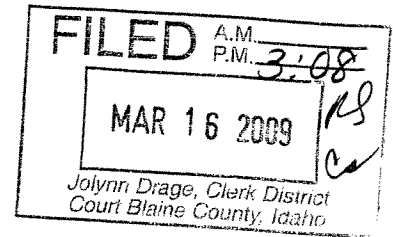

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-06-324
Petitioner,)	
	)	MOTION FOR
vs.	)	APPOINTMENT OF
	)	LEGAL EXPERT
STATE OF IDAHO,	)	AT COUNTY EXPENSE
)	
<u>Respondent,</u>	)	I.R.E. 702

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Motion for Appointment of Legal Expert at County Expense and in support thereof states as follows;

1. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a firearm enhancement. Said conviction and sentence were upheld on direct appeal.
2. Counsel was appointed to represent Petitioner pursuant to the Blaine County Public Defender Contract. Based upon said contract counsel moved for appointment of a separate District Judge to administer the financial aspects of the matter in so far as the public's liability for Petitioner's litigation costs.

3. Counsel for Petitioner previously filed a Motion for Appointment of an investigator, and a Motion for Appointment of Co-Counsel, at County Expense. Said motions were denied as open ended, undefined and unnecessary, at that time.

4. Subsequent to filing the original motions for professional assistance in presenting Petitioner's Post-Conviction Relief application, counsel has fully apprised himself of the contents of the record, the proceedings during the underlying criminal trial and the issues to be presented and tried in the Post-Conviction Relief Case.

5. In addition to revelation of newly discovered evidence and violations of Petitioner's right to due process of law, Petitioner alleges a host of instances of ineffective assistance of counsel as part of her Amended Petitioner for Post-Conviction Relief.

6. The legal term of art "ineffective assistance of counsel" is two part test consisting of both deficient performance and prejudice. The Court in Strickland v. Washington, 466 U.S. 668 (1984) stated the "benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id at 687-88. In other words a Petitioner must prove the attorney's conduct fell below an objective standard of reasonableness, was incompetent, and that said incompetence undermined the adversarial process such that the trial cannot be relied upon as having produced a just result.

7. According the Idaho Rule of Evidence 702, expert testimony is admissible when technical or other specialized knowledge will assist the trier of fact to understand the evidence of determine a fact in issue. A witness qualified as an expert by knowledge,

skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

8. Counsel for Petitioner has communicated with the Roark Law Firm concerning securing the services of Keith Roark, Attorney at Law, to review the record details concerning the allegations of ineffective assistance of counsel herein, and to render an expert opinion on each such assertion.

9. Mr. Keith Roark is one of only twenty six defense attorneys in the State of Idaho who is qualified by the Idaho Capital Defense Counsel Roster, attached hereto. Mr. Roark has extensive criminal trial experience and experience in murder cases.

10. Mr. Roark's usual and customary fee in matters similar to the instant case would be prohibitive. To review the entire record alone would take Mr. Roark hundreds and hundreds of hours of professional time and be cost prohibitive to the County, therefore it is proposed that Mr. Roark review selected portions of the trial testimony and interrogation by trial counsel, together with selected non-evidentiary materials, conduct focused legal research, prepare an affidavit and potential trial testimony for a flat fee of Five Thousand Dollars. (\$5,000).

WHEREFORE, Defendant prays this honorable Court in its Order Appointing Legal Expert, Keith Roark, Attorney at Law, at County Cost.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW


CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.15.09
DATED


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of MARCH, 2009, a true and correct copy of the foregoing MOTION FOR APPOINTMENT OF LEGAL EXPERT AT COUNTY COST was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

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CHRISTOPHER P. SIMMS

Idaho Capital Defense Counsel Roster
Capital Defense Counsel Application + Information Sheet

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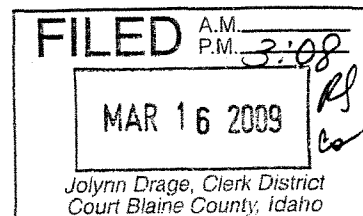
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-06-324
Petitioner,)	
)	
vs.	)	MOTION TO TAKE
	)	JUDICIAL NOTICE OF
STATE OF IDAHO,	)	COURT FILES
)	
<u>Respondent,</u>	)	I.R.E. Art. II, Rule 201

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Motion To Take Judicial Notice of Court Files and in support thereof states as follows;

1. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a fire arm enhancement. Said conviction and sentence were upheld on direct appeal.
2. The underlying criminal case brought in this Fifth Judicial District, State of Idaho, in and for Blaine County was assigned case number CR-03-18200. The appeal to the Supreme Court of Idaho was assigned case number 33312. The Supreme Court's decision, 2008 Opinion No. 89 was published and can be found at 188 P.3d 912.

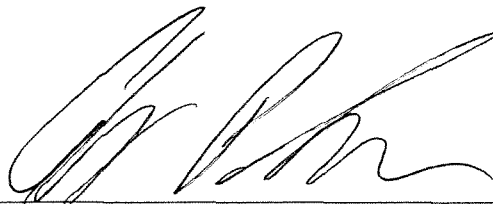
3. The District Court file contains all of the pleadings and physical evidence admitted at trial, as well as the Clerks Record and transcript compiled and prepared for appeal, as more fully described in the attached copy of the Clerks Minute Entries as found on the Idaho Supreme Court Repository.

4. The Supreme Court File contains the Transcript on Appeal, Supplements thereto and Index thereof.

5. Idaho Rule of Evidence 201(d), addressing Judicial Notice makes mandatory the taking of judicial notice of records, exhibits or transcripts from the court file of the same or a separate case when a party makes a written motion therefore identifying the specific items to be judicially noticed.

WHEREFORE, Petitioner prays this Honorable Court take notice of the contents of the Court files in State v. Johnson, District Case No. CR-03-18200 and Supreme Court Case No. 33312.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.15.09
DATED

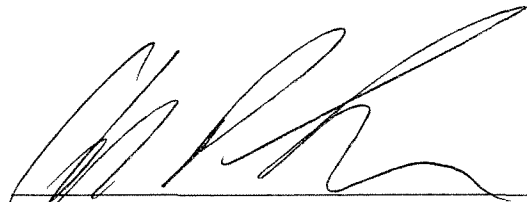
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of MARCH, 2009, a true and correct copy of the foregoing MOTION TO TAKE JUDICIAL NOTICE OF COURT FILES was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

 US Mail

 Hand Delivery

 Via facsimile 208.854.8074 & 208.788.5554


CHRISTOPHER P. SIMMS

State of Idaho vs. Sarah M Johnson

No hearings scheduled

Case: **CR-2003-0018200** District Judge: **R. Barry Wood** Amount due: **\$15,088.50** Closed pending clerk action

Charges:	Violation Date	Charge	Citation	Disposition
	09/02/2003	118-4001-I Murder I Arresting Officer: Blaine Prosecutor,, 9500		Finding: Guilty Disposition date: 06/30/2005 Fines/fees: \$5,088.50 Credited time (Yes): 609 days
	09/02/2003	118-4001-I Murder I Arresting Officer: Blaine Prosecutor,, 9500		Finding: Guilty Disposition date: 06/30/2005 Fines/fees: \$5,000.00
	09/02/2003	119-2520 Enhancement- use Of Deadly Weapon Comm Of Felony Arresting Officer: Blaine Prosecutor,, 9500		Finding: Guilty Disposition date: 06/30/2005 Fines/fees: \$0.00 Det Penitentiary: 15 days

Register
of Date
actions:

10/29/2003 New Case Filed, Indictment
10/29/2003 Prosecutor assigned Jim Thomas
10/29/2003 Case Sealed
10/29/2003 Warrant Issued - Arrest Bond amount: 2000000.00
10/29/2003 Motion to Seal Indictment
10/29/2003 Order Setting Bail (no bail)
10/29/2003 Order Sealing Indictment
10/30/2003 Defendant: Johnson, Sarah Marie Order Appointing Public
Defender Court appointed Bob Pangburn
10/30/2003 Defendant: Johnson, Sarah Marie Order Appointing Public
Defender Public defender Bob Pangburn
10/30/2003 Order Appointing Public Defender
10/30/2003 Motion to Unseal Indictment
10/30/2003 Notice of Intent Not to Seek the Death Penalty
10/30/2003 Notice of Intent to Seek Sentencing Enhancement
10/30/2003 Court Minutes
10/30/2003 Interim Hearing Held, Initial Appearance and Motion to
Unseal the Indictment
10/30/2003 Case Unsealed
10/30/2003 Hearing Scheduled (Arraignment 11/03/2003 09:00 AM)
10/30/2003 Notice Of Hearing
10/31/2003 Request to Obtain Approval to Broadcast and/or
Photograph a Court Proceeding (Mountain Express)
10/31/2003 Request to Obtain Approval to Broadcast and/or
Photograph a Court Proceeding (KMVT)
11/03/2003 Motion for Grand Jury Transcript
11/03/2003 Motion for Order Controlling Pre-Trial Publicity, Motion to
Shorten Time & Notice of Hearing
11/03/2003 Request for Discovery

11/03/2003 Hearing result for Arraignment held on 11/03/2003 09:00 AM: Arraignment / First Appearance
 11/03/2003 Hearing Scheduled (Hearing Scheduled 11/05/2003 10:00 AM)
 11/03/2003 Notice Of Hearing
 11/03/2003 Scheduling Order, Notice Of Trial Setting And Initial Pretrial Order
 11/03/2003 Court Minutes
 11/03/2003 Hearing Scheduled (Jury Trial 02/10/2004 09:00 AM)
 11/03/2003 Hearing Scheduled (Pretrial Conference 01/12/2004 09:00 AM)
 11/03/2003 Notice Of Hearing
 11/03/2003 Request To Obtain Approval to Broadcast and/or Photograph a Court Proceeding (Wood River Journal)
 11/05/2003 Hearing result for Hearing Scheduled held on 11/05/2003 10:00 AM: Hearing Held
 11/05/2003 Court Minutes
 11/05/2003 Hearing Scheduled (Evidentiary 11/20/2003 09:30 AM)
 11/05/2003 Notice Of Hearing
 11/05/2003 Order for Grand Jury Transcript
 11/07/2003 Amended Notice of Hearing
 11/07/2003 Request to Obtain Approval to Broadcast and/or Photograph a Court Proceeding (Court TV)
 11/10/2003 Hearing Held
 11/10/2003 Court Minutes
 11/10/2003 ExParte Motion for Leave to Employ Investigator and Declaration In Support
 11/10/2003 ExParte Motin for Appointment of Co-Counsel and Declaration in Support
 11/10/2003 Court Minutes
 11/10/2003 Memorandum in Response to Defense Request for Additional Attorney at County Expense
 11/20/2003 Hearing result for Evidentiary held on 11/20/2003 09:30 AM: Hearing Held
 11/20/2003 Court Minutes
 11/20/2003 OrderRegarding the Grand Jury Transcript
 11/24/2003 Motion for Extension of Time to File Pre-Trial Motions
 11/24/2003 Affidavit In Support Motion for Investigation Services
 Court Minutes Hearing type: Re: Appointment of Defense
 11/25/2003 Co-Counsel Hearing date: 11/25/2003 Time: 10:00 am
 Court reporter: Sue Israel Audio tape number: D-837
 11/25/2003 Order Granting Motion for Investigation Services
 11/25/2003 Hearing Held
 11/25/2003 Court Minutes, Lee Ritzau as co-counsel appointed
 11/26/2003 Memorandum Decision on Defendant's Motion for Appointment of Co-Counsel
 11/26/2003 Order Re: Defendnt's Motion for Appointment of Co-Counsel
 12/01/2003 State's Amended Requestt For Discovery/demand For Alibi
 12/01/2003 Response To Request For Discovery/State's
 12/02/2003 Motion for Order for Leave to Withdraw as Attorney of Record and Notice of Hearing Thereon

12/02/2003 Hearing ~~Sched~~uled (Hearing Scheduled 12/08/2003 09:00 AM)
 12/04/2003 Lodged/~~Reporter's~~ Transcript of Grand Jury Proceedings
 12/08/2003 Defendant: Johnson, Sarah Marie Order Appointing Public Defender Public defender Stephen D. Thompson
 12/08/2003 Court Minutes
 12/08/2003 Hearing ~~result~~ for Motion to Withdraw held on 12/08/2003 09:00 AM: Hearing Held
 12/09/2003 State's 1st Supplemental Response To Request For Discovery
 12/10/2003 Motion for Hearing to Clarify Order Prohibiting Pre-Trial Publicity
 12/10/2003 Hearing Scheduled (Hearing Scheduled 12/15/2003 09:00 AM)
 12/11/2003 Request to Obtain Approval to Broadcast and/or photograph a court proceeding (Court TV)
 12/12/2003 State's 2nd Supplemental Response To Request For Discovery
 12/12/2003 Motion To ~~Transfer~~ And Unseal Search Warrant Affidavits, Returns and Motions
 12/15/2003 Hearing ~~result~~ for Hearing Scheduled held on 12/15/2003 09:00 AM: Hearing Held
 12/15/2003 Court Minutes
 12/15/2003 Ex Parte Motion For Case Expenses and Declaration In Support
 12/16/2003 Motion to ~~Seal~~
 12/17/2003 Amended Order Regarding Pre-Trial Publicity
 12/17/2003 Memorandum Decision On Plaintiff's Motion For Order Clarifying Pre-Trial Publicity Order
 12/19/2003 Order Granting Leave to Withdraw as Attorney of Record (Ritzau)
 12/22/2003 Motion for Case Expenses and Declaration in Support
 12/22/2003 Hearing Scheduled (Hearing Scheduled 12/29/2003 09:00 AM)
 12/22/2003 Motion for Transcript
 12/23/2003 Order Sealing
 12/23/2003 Receipt, ~~Inventory~~ & Return of Detention Warrant
 12/23/2003 Order ~~Transferring~~ And Unsealing Search Warrant Affidavits, ~~Ret~~urns and Motions
 12/29/2003 Hearing ~~result~~ for Hearing Scheduled held on 12/29/2003 09:00 AM: Motion for Case Expenses, Hearing Held; Motion granted.
 12/29/2003 Court Minutes
 12/30/2003 Appearance & Stipulation for Substitution of Counsel
 01/05/2004 Motion to Continue Trial & to Extend Procedural Deadlines
 01/05/2004 Order for ~~case~~ expenses
 01/05/2004 Fee Payment Authorization
 01/06/2004 Hearing Scheduled (Motion 01/12/2004 09:00 AM)
 01/06/2004 Notice Of Hearing
 01/06/2004 Order for ~~Transcript~~
 01/12/2004 Hearing ~~result~~ for Motion held on 01/12/2004 09:00 AM: Court Minutes

01/12/2004 Hearing result for Pretrial Conference held on 01/12/2004 09:00 AM: Court Minutes
 01/12/2004 Hearing result for Jury Trial held on 02/10/2004 09:00 AM: Continued
 01/12/2004 Hearing Scheduled (Jury Trial 06/01/2004 09:00 AM)
 01/12/2004 Notice Of Hearing
 01/15/2004 Corrected Motion For Transcript
 01/15/2004 Waiver Of Speedy Trial
 01/16/2004 Order For Investigative Expenses
 01/20/2004 Letter from Commissioners Assigning Mark Rader as co-counsel for Defendant
 01/21/2004 Order To Continue Trial And To Extend Procedural Deadlines
 02/03/2004 Motion For Access To 1193 Glen Aspen Drive
 02/06/2004 Notice Of Hearing On Defendant's Motion For Access To 1193 Glen Aspen Drive
 02/06/2004 Hearing Scheduled (Motion 02/13/2004 09:00 AM)
 02/10/2004 Notice Of Hearing On Defendant's Motion For Order That The Defendant Appear In Court In Street Clothes
 02/10/2004 Notice Of Hearing On Defendant's Motion To Compel Discovery Regarding Bruno Santos
 02/10/2004 Notice Of Hearing On Defendant's Motion To Compel Discovery Regarding Malinda Gonzalez
 02/10/2004 Hearing Scheduled (Motion 02/17/2004 02:00 PM)
 02/11/2004 Motion For Order Directing that the Defendant be Unshackled & Dressed in Civilian Clothes at all Court Appearances; Memorandum in Support
 02/11/2004 Motion to Compel Discovery Regarding Malinda Gonzales
 02/11/2004 Motion to Compel Discovery Regarding Bruno Santos
 02/13/2004 Memorandum Objecting To Defense Motion To have Defendant Unshackled And Dressed In Civilian Clothes At All Court Appearances
 02/13/2004 Hearing result for Motion held on 02/13/2004 09:00 AM: Court Minutes
 02/13/2004 Hearing result for Motion held on 02/13/2004 09:00 AM: Court Minutes
 02/17/2004 Order Granting Limited Access into Residence of 1193 Glen Aspen Drive
 02/17/2004 Court Minutes
 02/17/2004 Hearing result for Motion held on 02/17/2004 02:00 PM: Hearing Held
 02/17/2004 Lodged/Transcript of Hearings: Defendant's Motion for Appointment of Co-Counsel and Hearing Re Public Defender Contract Nov. 25, 2003 and Motion to Withdraw, Dec. 8, 2003
 02/17/2004 Lodged/Initial Appearance, Oct. 30, 2003; Arraignment, Nov. 3, 2003; Cont'd Motion on Pretrial Publicity, Nov. 5, 2003
 02/19/2004 Hearing Scheduled (Hearing Scheduled 02/24/2004 01:00 PM)
 02/19/2004 Notice Of Hearing
 02/23/2004 Hearing result for Hearing Scheduled held on 02/24/2004 01:00 PM: Hearing Held

02/23/2004 Court Minutes
 02/23/2004 State's Third Supplemental Response To Request For Discovery
 02/25/2004 Order Denying Defendant's Motion to Have Defendant in Civilian Clothes and Unshackled at all Pretrial Hearings
 02/25/2004 Lodged/Transcripts of various motions
 03/08/2004 Hearing Scheduled (Hearing Scheduled 03/11/2004 03:00 PM)
 03/08/2004 Notice Of Hearing
 03/10/2004 Request for Reassignment of Presiding District Judge
 03/10/2004 Order of Reassignment of Presiding District Judge
 03/10/2004 Change Assigned Judge
 03/15/2004 Motion to Continue Trial and to Extend Procedural Deadlines
 03/15/2004 Continued (Hearing Scheduled 03/18/2004 03:00 PM)
 03/16/2004 Supplemental Request For Discovery
 03/18/2004 Hearing result for Hearing Scheduled held on 03/18/2004 03:00 PM: Court Minutes
 03/19/2004 State's 4th Supplemental Response To Request For Discovery
 03/25/2004 Notice Of Intent Of The Court To Enter An Amended Order Unsealing Grand Jury Exhibits For The Limited Purpose Of Viewing By The Court
 03/25/2004 Order Granting Continuance And Procedural Deadlines
 04/08/2004 Motion To Extend Deadline For Submission Of Jury Questionnaire
 04/08/2004 Hearing Scheduled (Hearing Scheduled 04/12/2004 09:30 AM)
 04/08/2004 Notice Of Hearing
 04/09/2004 State's Proposed Juror Questionnaire
 04/12/2004 Hearing result for Hearing Scheduled held on 04/12/2004 09:30 AM: Court Minutes
 04/12/2004 Order Granting Motion To Extend Deadline For Submission Of Jury Questionnaire
 04/13/2004 Continued (Jury Trial 09/27/2004 09:00 AM)
 04/14/2004 Hearing Scheduled (Hearing Scheduled 04/16/2004 01:00 PM)
 04/15/2004 Subpoena Returned/Heather Saunders
 04/15/2004 Lodged/Transcript of Motion to View Premises; Motions to Compel
 04/16/2004 Lodged/Transcript of Proceedings, Defendant's Motion to Extend Deadline for Submission of Jury Questionnaire
 04/20/2004 Fee Payment Authorization (Bob Pangburn - \$730.11)
 04/26/2004 (Hearing Scheduled 05/03/2004 02:30 PM) Motion to Compel
 04/26/2004 Defendant's Second Supplemental Request for Discovery
 04/26/2004 Motion to Compel Discovery Re: Subpoenas, Subpoena Returns, Releases, Letters & Notices
 04/26/2004 State's Objection to Motion to Compel Discovery and Notice of Hearing Setting
 04/29/2004 Motion to Continue Motion to Compel Discovery
 04/30/2004 State's Proposed Juror Questionnaire (amended)

05/03/2004 Proposed Juror Questionnaire
 05/03/2004 Hearing result for Motion held on 05/03/2004 02:00 PM:
 Court Minutes
 05/03/2004 Hearing Scheduled (Motion 05/24/2004 11:00 AM)
 05/03/2004 Order Granting Continuance
 05/03/2004 Defendant's Proposed Juror Questionnaire
 05/05/2004 Notice Of Hearing
 05/17/2004 Amended Indictment
 05/17/2004 State's 5th Supplemental Response To Request For
 Discovery
 05/19/2004 State's 6th Supplemental Response To Request For
 Discovery
 05/20/2004 Motion to Strike Purported Amended Indictment
 State's Motion Objecting To Hearing Date For Lack Of
 05/21/2004 Proper Notice On Defendant's Motion To Strike Amended
 Indictment
 05/24/2004 Hearing Scheduled (Hearing Scheduled 05/26/2004 11:30
 AM)
 05/24/2004 Hearing result for Motion held on 05/24/2004 11:00 AM:
 Hearing Held
 05/24/2004 Court Minutes
 05/24/2004 Hearing Scheduled (Motion 05/26/2004 12:00 PM)
 05/25/2004 Memorandum In Response To Defendant's Motion To
 Strike Amended Indictment
 05/25/2004 State's 7th Supplemental Response To Request For
 Discovery
 05/26/2004 Hearing result for Jury Trial held on 09/27/2004 09:00 AM:
 Hearing Held
 05/26/2004 Court Minutes
 06/08/2004 State's 8th Supplemental Response To Request For
 Discovery
 06/08/2004 Hearing Scheduled (Status 06/10/2004 02:00 PM)
 06/08/2004 Notice Of Hearing
 06/08/2004 Hearing Scheduled (Jury Trial 09/27/2004 09:00 AM)
 06/10/2004 Hearing result for Status held on 06/10/2004 02:00 PM:
 Court Minutes
 06/10/2004 Hearing result for Status held on 06/10/2004 02:00 PM:
 Hearing Held
 06/10/2004 Motion for order directing sheriff immediately to resume
 custody of def & return def to the Blaine County Jail
 06/10/2004 Hearing Scheduled (Scheduling Conference 06/29/2004
 01:30 PM)
 06/10/2004 Hearing Scheduled (Scheduling Conference 07/15/2004
 01:30 PM)
 06/10/2004 Hearing Scheduled (Scheduling Conference 08/10/2004
 01:30 PM)
 06/10/2004 Hearing Scheduled (Scheduling Conference 08/31/2004
 01:30 PM)
 06/10/2004 Hearing Scheduled (Pretrial Motions 08/12/2004 01:30 PM)
 06/10/2004 Hearing Scheduled (Scheduling Conference 09/16/2004
 09:00 AM)
 06/10/2004 Notice Of Hearing

06/14/2004 State's ~~proposed~~ juror questionnaire
 06/16/2004 State's ~~addendum~~ to proposed juror questionnaire
 06/21/2004 State's 9th Supplemental Response To Request For Discovery
 06/23/2004 Def's ~~motion~~ to compel discovery & request for sanctions
 06/23/2004 Notice Of ~~Hearing~~ on Def's motion to compel discovery & request for ~~sanctions~~
 06/23/2004 Hearing ~~Scheduled~~ (Motion to Compel 06/29/2004 01:30 PM)
 06/24/2004 Continued (Scheduling Conference 06/30/2004 09:00 AM)
 06/24/2004 Continued (Motion to Compel 06/30/2004 09:00 AM)
 06/24/2004 Notice Of ~~Hearing~~
 06/29/2004 Def's ~~amended~~ motion to compel discovery & request for sanctions
 06/30/2004 Reporter Transcript pretrial scheduling conference held on June 10, 2004
 06/30/2004 Hearing ~~result~~ for Motion to Compel held on 06/30/2004 09:00 AM: Court Minutes
 06/30/2004 Hearing ~~result~~ for Motion to Compel held on 06/30/2004 09:00 AM: ~~Hearing~~ Held
 06/30/2004 Hearing ~~Scheduled~~ (Pretrial Motions 07/07/2004 10:00 AM)
 06/30/2004 Notice Of ~~Hearing~~
 07/01/2004 Motion for ~~order~~ directing the State to render up evidence for independent scientific examination & testing
 07/01/2004 Motion to ~~shorten~~ time
 07/01/2004 Notice Of ~~Hearing~~
 07/02/2004 Affidavit for ~~search~~ warrant
 07/02/2004 Search ~~Warrant~~ Returned
 07/02/2004 Receipt, ~~Inventory~~ & Return of Warrant
 07/02/2004 Def's ~~Response~~ To Request For Discovery
 07/02/2004 Motion for ~~leave~~ to supplement discovery
 07/07/2004 Reporter ~~transcript~~ motion to compel/scheduling hearing on 6-30-04
 07/07/2004 Def's ~~amended~~ proposed juror questionnaires
 07/07/2004 Hearing ~~result~~ for Pretrial Motions held on 07/07/2004 10:00 AM: Court Minutes
 07/07/2004 Hearing ~~result~~ for Pretrial Motions held on 07/07/2004 10:00 AM: ~~Hearing~~ Held
 07/08/2004 State's 10th Supplemental Response To Request For Discovery
 07/08/2004 State's 2nd Request for Discovery/demand For Alibi
 07/08/2004 Motion to ~~continue~~ trial
 07/08/2004 Notice Of ~~Hearing~~ on def's motion to continue trial
 07/09/2004 State's ~~response~~ to Def's motion to continue jury trial
 07/15/2004 Hearing ~~Scheduled~~ (Motion to Continue 07/15/2004 01:30 PM)
 07/15/2004 Court ~~Minutes~~ Hearing type: Motion to Continue Hearing date: 07/15/2004 Time: 1:34 pm Court reporter: Linda Ledbetter Audio tape number: D907
 07/15/2004 Hearing ~~result~~ for Motion to Continue held on 07/15/2004 01:30 PM: ~~Hearing~~ Held
 07/15/2004 Court ~~Minutes~~-review of the Johnson home

07/15/2004 Motion to continue denied
 07/15/2004 Reporter transcript on motion for order re: testing dated July 7, 2004
 07/16/2004 Motion for status conference
 07/21/2004 Hearing Scheduled (Status 07/21/2004 12:00 PM)
 07/21/2004 Hearing result for Status held on 07/21/2004 12:00 PM: Court Minutes
 07/21/2004 Hearing result for Status held on 07/21/2004 12:00 PM: Hearing Held
 07/21/2004 Hearing result for Jury Trial held on 09/27/2004 09:00 AM: Continued
 07/22/2004 Hearing Scheduled (Jury Trial 02/01/2005 09:00 AM)
 07/22/2004 Notice Of Hearing
 07/27/2004 Motion for order to fix mute button on defense table microphone
 07/27/2004 Motion re: juror badges
 07/27/2004 Motion for order directing that the Def be unshackled and dressed in civilian clothes at trial; memorandum in support of motion
 07/27/2004 Motion re: use of conclusory legal terms at trial
 07/30/2004 Motion to exempt jurors from courthouse security measures
 07/30/2004 Motion re: excuses from jury duty
 07/30/2004 Motion to conduct individual & sequestered voir dire of prospective jurors
 08/10/2004 Hearing result for Scheduling Conference held on 08/10/2004 01:30 PM: Hearing Vacated
 08/10/2004 Hearing result for Pretrial Motions held on 08/12/2004 01:30 PM: Hearing Vacated
 08/10/2004 Motion to exclude evidence re: Def's interactions w/ counselors
 08/10/2004 Motion to exclude Def's medical & prescription records & related evidence
 08/10/2004 Motion to exclude Def's school records & related evidence
 08/10/2004 Motion for deadline to complete jury questionnaires
 08/10/2004 Def's 4th Supplemental Request For Discovery
 08/12/2004 State's Motion for discovery specificity & objection to release of evidentiary items
 08/12/2004 Lodged: State's memorandum in support of objection to releasing evidence & demand for specificity
 08/12/2004 Motion to suppress Def's statements to law enforcement personnel
 08/12/2004 Motion to suppress Def's statements to James & Linda Vavold
 08/12/2004 Motion to suppress Def's statements to jail inmates
 08/12/2004 Motion to suppress Def's statements to Malinda Gonzales
 08/12/2004 Def's 5th Supplemental Request For Discovery
 08/18/2004 Continued (Scheduling Conference 09/15/2004 09:00 AM)
 08/20/2004 Notice Of Bond Forfeiture
 08/23/2004 Memorandum in Support of Motion to Suppress Defendnat's Statements to Jail Inmates
 08/23/2004 State's Eleventh Supplemental Response to Request for Discovery

08/23/2004 Def's Motion to Compel Discovery and Response to State's Motion for Discovery Specificity and Objection to Release of Evidentiary Items
 08/23/2004 Notice Of Hearing on Plaintiff's Motion for Discovery Specificity and Objection to Release of Evidentiary Items
 08/23/2004 Notice Of Hearing on Defendant's Motion for Order Directing that the Defendant be Unshackled and Dressed in Civilian Clothes at Trial
 08/23/2004 Notice Of Hearing on Defendant's Motion Re: Excuses from Jury Duty
 08/23/2004 Notice Of Hearing on Defendant's Motion Re: Juror Badges
 08/23/2004 Notice Of Hearing on Defendant's Motion to Exempt Jurors from Courthouse Security Measures
 08/23/2004 Notice Of Hearing on Defendant's Motion Re: Use of Conclusory Legal Terms at Trial
 08/23/2004 Notice Of Hearing on Defendant's Motion for Order to Fix Mute Button on Defense Table Microphone
 08/23/2004 Notice Of Hearing on Defendant's Motion to Suppress Defendant's Statements to Jail Inmates
 08/23/2004 Notice of Hearing on Defendant's Motion for Defendant's Motion for Deadline to Complete Jury Questionnaires
 08/23/2004 Notice Of Hearing on Defendant's Motion to Conduct Individual and Sequestered Voir Dire of Prospective Jurors
 08/24/2004 Lodged: Memorandum in support of motion to suppress Def's statements to jail inmates
 08/25/2004 Affidavit Of Service- Subpoena, Greg Sage Lt. Blaine County Sheriff
 08/25/2004 Affidavit Of Service - Subpoena Duces Tecum Greg Sage, Blaine County Sheriff
 08/25/2004 Affidavit Of Service - Subpoena Stenve Harkins Blaine County Sheriff
 08/25/2004 Affidavit Of Service - Subpoena, Walt Femling Blaine County Sheriff
 08/27/2004 Lodged: Memorandum objecting to defense motion to prevent the state from using certain words at trial
 08/27/2004 Lodged: Memorandum in opposition to def's motion to suppress Def's statements made to jail inmates
 08/30/2004 State's Response To Motion For Order Directing That The Defendant Be Unshackled And Dressed In Civilian clothes At Trial
 08/30/2004 State's Response To Defense Motion To Exempt Jurors From Courthouse Security Measures
 08/30/2004 State's Response To Defense Motion For Deadline To Complete Jury Questionnaires
 08/30/2004 State's Response To Defense Motion RE: Excuses From Jury Duty
 08/30/2004 State's Response To Defense Motion To Conduct Individual And Sequestered Voir Dire Of Prospective Jurors
 08/31/2004 Court Minutes Hearing type: Motion Hearing date: 08/31/2004 Time: 2:15 pm Court reporter: Linda Ledbetter Audio tape number: CD 28
 08/31/2004 State's Motion to dismiss or in the alternative for a more definite statement, re: school records
 08/31/2004 State's Motion to dismiss or in the alternative for a more

definite ~~statement~~, re: to James & Linda Vavold

08/31/2004 State's ~~Motion~~ to dismiss or in the alternative for a more definite ~~statemetn~~, re: medical & prescription records

08/31/2004 State's ~~Motion~~ to dismiss or in the alternative for a more definite ~~statement~~, re: school records

08/31/2004 Hearing ~~result~~ for Scheduling Conference held on 08/31/2004 01:30 PM: Hearing Held

08/31/2004 Lodged: ~~Reporter~~ Transcript of hearing on July 21, 2004

09/01/2004 Hearing ~~Scheduled~~ (Motion 10/06/2004 09:00 AM)

09/01/2004 Notice Of ~~Hearing~~

09/15/2004 Request for briefing

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to exclude evidence re: Def's ~~interactions~~ with counselors

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to exclude Def's medical & ~~prescription~~ records & related evidence

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to exclude Def's school records & ~~related~~ evidence

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to suppress Def's statements to James & Linda Vavold

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to suppress Def's statements to law enforecement personnel

09/21/2004 Notice Of ~~Hearing~~ on Def's motion to suppress Def's statements to jail inmates

09/28/2004 Lodged: ~~memorandum~~ in opposition to Def's motion to suppress ~~Def's~~ statements to James & Linda Vavold

09/28/2004 Lodged: ~~Memorandum~~ in opposition to Def's motion to suppress ~~Def's~~ statements to law enforcement personnel

09/28/2004 Lodged: ~~Memorandum~~ in support of motion to exclude Def's ~~medical~~ & prescription records & related evidence

09/28/2004 Lodged: ~~Memorandum~~ in support of motion to exclude testimony of Linda & James Vavold

09/28/2004 Lodged: ~~Memorandum~~ in support of motion to exclude Def's ~~school~~ records & related evidence

09/28/2004 Lodged: ~~Memorandum~~ in support of motion to evidence regarding ~~Def's~~ interactions with counselors

09/28/2004 Lodged: ~~Memorandum~~ in support of motion to suppress Def's ~~statements~~ to Law Enforcement Personnel

09/30/2004 Stipulation to prevent destruction of evidence by the defense

09/30/2004 Lodged: ~~State's~~ Release Inventory

10/01/2004 State's 12th Supplemental Response To Request For Discovery

10/04/2004 Affidavit Of Service

10/04/2004 Subpoena ~~Returned~~-Linda Vavold

10/04/2004 Affidavit Of Service

10/04/2004 Subpoena ~~Returned~~-Walt Femling

10/04/2004 Affidavit Of Service

10/04/2004 Subpoena ~~Returned~~-Steve Harkins

10/04/2004 Affidavit Of ~~Service~~

10/04/2004 Subpoena ~~Returned~~-Tammy Hugh

10/04/2004 Affidavit Of ~~Service~~

10/04/2004 Subpoena ~~Returned~~-Greg Sage

10/04/2004 Affidavit Of Service
 10/04/2004 Subpoena Returned-Doug Nelson
 10/04/2004 Affidavit Of Service
 10/04/2004 Subpoena Duces Tecum Returned-Greg Sage
 10/06/2004 Court Minutes Hearing type: Motion to Suppress Hearing
 date: 10/06/2004 Time: 9:00 am Audio tape number: D2
 10/06/2004 Order on request to obtain approval to broadcast and/or
 photograph a court proceeding
 10/06/2004 Lodged: reporter's transcript hearing on August 31, 2004
 10/06/2004 Hearing result for Motion held on 10/06/2004 09:00 AM:
 Hearing Held
 10/07/2004 Hearing result for Motion held on 10/06/2004 09:00 AM:
 Case Taken Under Advisement
 10/08/2004 Hearing Scheduled (Motion to Suppress 10/29/2004 09:00
 AM)
 10/08/2004 Notice Of Hearing
 10/12/2004 Lodged: Amended Release Inventory
 10/12/2004 Emergency motion for order directing State to remove Def
 from Solitary confinement, to house Def in accordance with
 the law, and to cease & desist isolating Def from her
 counsel
 10/12/2004 Affidavit of Patrick Dunn
 10/12/2004 Affidavit of Bob Pangburn
 10/12/2004 Hearing Scheduled (Motion 10/13/2004 11:00 AM)
 10/12/2004 State's motion to continue suppression hearing
 10/13/2004 Hearing Held
 10/13/2004 Court Minutes
 10/13/2004 Hearing result for Motion held on 10/13/2004 11:00 AM:
 Hearing Held
 10/13/2004 Notice Of Hearing
 10/13/2004 Continued (Motion to Suppress 11/05/2004 11:00 AM)
 10/13/2004 Order Setting Pre-Trial Motion Cutoff Date
 10/13/2004 Order granting continuance of suppression motion
 10/14/2004 State's Third Request For Discovery and Demand For Alibi
 10/18/2004 Order re: access to Sarah Marie Johnson
 10/22/2004 Notice to counsel of un-readable exhibits
 10/22/2004 State's motion for reconsideration of denial of defense
 motion to conduct individual & requested voir dire of
 prospective jurors
 10/22/2004 Notice Of Hearing
 10/22/2004 State's Motion for status hearing on juror questionnaires
 10/22/2004 Notice Of Hearing
 10/22/2004 Hearing Scheduled (Motion for Reconsideration 11/05/2004
 11:00 AM)
 10/25/2004 Order of Def's motion to suppress Def's statement to jail
 inmates
 10/29/2004 State's motion to compel
 10/29/2004 State's motion to shorten time for notice of hearing
 10/29/2004 Notice Of Hearing
 10/29/2004 Hearing Scheduled (Motion to Compel 11/02/2004 01:00
 PM)

10/29/2004 Def's Response To Request For Discovery
 10/29/2004 Def's motion to compel State to cease and desist
 instructing State employees not to speak to the Defense
 Notice Of Hearing on Def's motion to compel State to
 10/29/2004 cease and desist instructing State employees not to speak
 to the defense
 10/29/2004 Def's motion to compel discovery for purposes of testing &
 request for sanctions
 10/29/2004 Notice Of Hearing on Def's motion to compel discovery &
 request for sanctions
 Def's motion to compel State to permit examination of
 10/29/2004 fingerprint evidence outside the presence of State
 investigators
 Notice Of Hearing on Def's motion to compel State to
 10/29/2004 permit examination of fingerprint evidence outside the
 presence of State investigators
 10/29/2004 Def's motion for order directing State to run fingerprint
 check of Bruno Santos
 10/29/2004 Notice Of Hearing on Def's motion for order directing State
 to run fingerprint check of Bruno Santos
 11/01/2004 State's motion to compel discovery
 11/01/2004 Notice Of Hearing
 11/01/2004 Hearing Scheduled (Motion to Compel 11/05/2004 11:00
 AM)
 11/01/2004 Affidavit Of Service
 11/01/2004 Subpoena Duces Tecum Returned-James Boyle
 11/01/2004 Certificate of true copy of subpoena (Duces Tecum)
 11/01/2004 Hearing result for Motion to Compel held on 11/02/2004
 01:00 PM: Hearing Vacated
 11/01/2004 Ex parte motion to commit witness to bail
 11/01/2004 Ex parte affidavit of Jim J. Thomas in support of motion to
 commit witness to bail
 11/01/2004 Hearing Scheduled (Defendant's Motion to Compel
 11/05/2004 11:00 AM)
 11/01/2004 Hearing Scheduled (Motion for status hearing on jury
 questionnaires 11/05/2004 11:00 AM)
 11/02/2004 Def's motion to compel photographic evidence
 11/02/2004 Motion to shorten time
 11/02/2004 Notice Of Hearing on Def's motion to compel photographic
 evidence & motion to shorten time
 11/02/2004 Hearing Scheduled (Motion to Shorten Time 11/05/2004
 11:00 AM)
 11/02/2004 Ex Parte Order setting witness bail
 11/03/2004 State's Response to Defendant's Motion for Order Directing
 State to Run Fingerprint Check of Bruno Santos
 State's Response to Defendant's Motion to Compel State to
 11/03/2004 Cease and Desist Instructing State Employees not to
 Speak to the Defense
 State's Response to Defendant's Motion to Compel State to
 11/03/2004 Permit Examination of Ringerprint Evidence Outside the
 Presence of State Investigators
 State's Response to Defendant's Motion to Compel
 11/03/2004 Discovery for Purposes of Testing and Request for
 Sanctions

11/03/2004 State's ~~Response~~ to Defendant's Motion to Compel Photographic Evidence
 11/04/2004 Order to ~~Trans~~port Defendant
 11/04/2004 State's ~~Motion~~ for Order to Transport Defendant
 Notice Of ~~Appearance~~; motion to quash witness bond;
 11/04/2004 motion to ~~shorten~~ time; and notice of hearing-Doug Werth for Bruno Santos
 11/04/2004 Discovery ~~Request~~-Doug Werth for Bruno Santos
 11/05/2004 Motion to ~~Dismiss~~
 11/05/2004 Motion to Exclude Evidence
 11/05/2004 Motion To Suppress Illegally Obtained Physical Evidence
 Court Minutes Hearing type: Motion Hearing date:
 11/05/2004 11/05/2004 Time: 11:00 am Court reporter: Linda Ledbetter
 Audio tape number: D4
 11/05/2004 Lodged: ~~Reporter's~~ transcript hearing on October 13, 2004
 11/05/2004 Lodged: ~~Reporter's~~ transcript hearings on October 6 & 7, 2004
 11/05/2004 Hearing ~~result~~ for Motion to Shorten Time held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~result~~ for Motion for status hearing on jury questionnaires held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~result~~ for Defendant's Motion to Compel held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~result~~ for State's Motion to Compel held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~result~~ for Motion for Reconsideration held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~result~~ for Motion to Suppress held on 11/05/2004 11:00 AM: Hearing Held
 11/05/2004 Hearing ~~Scheduled~~ (Motion 11/09/2004 10:00 AM)
 11/05/2004 Affidavit of Consuelo Cederro
 11/09/2004 Affidavit of Rick Rilkins
 11/09/2004 Affidavit of Douglas A. Werth
 11/09/2004 Motion for Witness Pursuant to ICR 15 For Taking of Deposition and Discharge
 11/09/2004 Hearing ~~Scheduled~~ (Status/Jury Procedures 11/24/2004 09:00 AM)
 11/09/2004 Notice Of ~~Hearing~~
 11/09/2004 Hearing ~~result~~ for Motion held on 11/09/2004 10:00 AM: Hearing Held
 11/09/2004 Second ~~Affidavit~~ of Douglas A. Werth
 11/15/2004 Special ~~State's~~ Response To Request For Discovery Re: Bruno Santos Witness Bail Proceedings
 11/16/2004 Stipulation ~~for~~ defense access to State's evidence
 11/16/2004 State's motion for witness video deposition of Bruno Santos
 11/16/2004 Affidavit of Jim J. Thomas in support of motion to take video deposition of Bruno Santos
 11/16/2004 Notice Of ~~Hearing~~
 11/16/2004 State's ~~motion~~ for witness deposition of Consuelo Cedeno/~~Cederra~~
 11/16/2004 Affidavit of Jim J. Thomas in support of motion to take video deposition of Consuelo Cedeno/Cederro

11/16/2004 Notice Of Hearing
 11/17/2004 State's Thirteenth Supplemental Response To Request For Discovery
 11/18/2004 Hearing Scheduled (Motion for Witness Deposition 11/24/2004 09:00 AM)
 11/19/2004 Notice Of 2nd Hearing on Def's motion to compel discovery for purposes of testing
 11/19/2004 Hearing Scheduled (Motion to Compel 11/24/2004 09:00 AM)
 11/22/2004 Def's 6th supplemental request for discovery
 11/23/2004 Lodged: Def's objection to State's motions to depose witnesses & memorandum in support
 11/23/2004 Affidavit Of Service
 11/23/2004 Subpoena Returned-Greg Sage
 Court Minutes Hearing type: Motion for Witness Deposition
 11/24/2004 Hearing date: 11/24/2004 Time: 9:24 am Court reporter: Susan Israel Audio tape number: D6
 11/24/2004 Hearing result for Motion to Compel held on 11/24/2004 09:00 AM: Hearing Held
 11/24/2004 Hearing result for Motion for Witness Deposition held on 11/24/2004 09:00 AM: Hearing Held
 11/24/2004 Hearing result for Status/Jury Procedures held on 11/24/2004 09:00 AM: Hearing Held
 11/24/2004 Hearing Scheduled (Status/Jury Procedures 12/03/2004 09:00 AM)
 11/24/2004 Notice Of Hearing
 Order on Def's motion to exclude Def's school records & related evidence, motion to exclude Def's interaction with counselors, and Def's motion to exclude medical & prescription records & related evidence
 12/01/2004
 12/02/2004 State's 14th Supplemental Response To Request For Discovery
 12/03/2004 Hearing result for Status/Jury Procedures held on 12/03/2004 09:00 AM: Hearing Held
 12/03/2004 Court Minutes
 12/03/2004 Lodged: reporter transcript for November 9, 2004
 12/03/2004 Lodged: reporter transcript for November 5, 2004
 12/03/2004 Jury Questionnaire
 12/09/2004 Hearing Scheduled (Status/Jury Procedures 12/14/2004 01:00 PM)
 12/09/2004 Notice Of Hearing
 12/09/2004 Affidavit Of Service
 12/09/2004 Subpoena Duces Tecum Returned-Lt. Dennis Dexter
 12/09/2004 Certificate of true copy of subpoena duces tecum
 12/14/2004 Subpoena Returned/Mark Dalton
 12/14/2004 Subpoena Returned/Ed Fuller
 Court Minutes Hearing type: Status Hearing date:
 12/14/2004 12/14/2004 Time: 11:00 am Court reporter: Linda Ledbetter Audio tape number: D8
 12/14/2004 Order denying Bob Pangburn's motion to withdraw
 12/14/2004 Order denying Mark Rader's motion to withdraw
 12/14/2004 Lodged: reporter's transcript from December 3, 2004

12/14/2004 Hearing **Held**
 12/14/2004 Return Of **Service**
 12/14/2004 Subpoena **Returned**- served on 12/13/04 to Ed Fuller
 12/14/2004 Return Of **Service**
 12/14/2004 Subpoena **Returned**- served on 12/13/04 to Mark Dalton
 Court **Minutes** Hearing type: Status/Jury Procedures
 12/14/2004 Hearing **date**: 12/14/2004 Time: 9:00 am Court reporter:
 Linda Ledbetter Audio tape number: D8
 12/14/2004 Hearing **result** for Status/Jury Procedures held on
 12/14/2004 01:00 PM: Hearing **Held**
 12/15/2004 State's Supplemental Response To Request For Discovery
 12/15/2004 Subpoena **Returned**/Phil High 12/10/04
 12/15/2004 Subpoena **Returned** / Gene Ramsey 12/10/04
 12/15/2004 Subpoena **Returned** / Walt Femling 12/10/04
 12/15/2004 Subpoena **Returned** / Greg Sage 12/10/04
 12/15/2004 Subpoena **Returned** /Connie Burrell 12/10/04
 12/15/2004 Subpoena **Returned** / Bryan Carpita 12/10/04
 12/15/2004 Subpoena **Returned**/ Brad Gelskey 12/10/04
 12/15/2004 Subpoena **Returned** / James Shaw 12/10/04
 12/15/2004 Subpoena **Returned**/ Salen Mink 12/15/2004
 12/15/2004 Subpoena **Returned** / Gary Kaufman
 12/15/2004 Subpoena **Returned**/ Nathan Corder
 12/15/2004 Subpoena **Returned**/ Cliff Katona
 12/15/2004 Subpoena **Returned** / Cloyce Corder
 12/15/2004 Subpoena **Returned**/ Stu Robinson
 12/15/2004 Subpoena **Returned** / Ron Taylor
 12/15/2004 Subpoena **Returned** / Steve Harkins
 12/15/2004 Court **Minutes**
 12/15/2004 Hearing **Held**
 12/17/2004 Hearing **Scheduled** (Status 12/29/2004 09:00 AM)
 12/17/2004 Hearing **Scheduled** (Status 01/07/2005 09:00 AM)
 12/17/2004 Hearing **Scheduled** (Status 01/24/2005 09:00 AM)
 12/17/2004 Hearing **Scheduled** (Order to Show Cause 12/23/2004
 09:00 AM)
 12/17/2004 Notice Of **Hearing**
 12/20/2004 Subpoena **Returned** / Lorna Kolash
 12/20/2004 Subpoena **Returned** Christian Ayala
 12/20/2004 Subpoena **Returned** Pat Alder
 12/20/2004 Subpoena **Returned** Mitch Marcroft
 12/20/2004 Subpoena **Returned** Kjell Elisson
 12/20/2004 Subpoena **Returned** Steve England
 12/20/2004 Subpoena **Returned** Dorothy Schinella
 12/20/2004 Subpoena **Returned** Karen's Pharmacy
 12/20/2004 Subpoena **Returned** Kyle Worthington
 12/20/2004 Subpoena **Returned** Marguerite Sowersby
 12/20/2004 Subpoena **Returned**/ Megan Sowersby
 12/20/2004 Subpoena **Returned**/ George Dondero
 12/20/2004 Subpoena **Returned**/ Karen Soracco
 12/20/2004 Subpoena **Returned**/ Mark Roemer

12/20/2004 Subpoena Returned/ Rachel Richards
 12/20/2004 Subpoena Returned/ Tim Richards
 12/20/2004 Subpoena Returned/ Kim Richards
 12/20/2004 Subpoena Returned/ Terri Sanders
 12/20/2004 Subpoena Returned/ Russ Mikel, Coroner
 12/20/2004 Subpoena Returned/ Randy Tremble
 12/20/2004 Subpoena Returned/ Chante Caudle
 12/20/2004 Subpoena Returned/ Raul Ornelas
 12/21/2004 Personal Return Of Service Subpoena Returned/ Matt Johnson
 12/21/2004 Personal Return Of Service Subpoena Returned/ Julie Weseman Johnson
 12/21/2004 Not Found Return Of Service/ Carlos Ayala
 12/21/2004 Not Found Return Of Service/ Cami Fahey
 12/21/2004 Subpoena Returned/ Rod Englert
 12/21/2004 Subpoena Returned/ Rick Sanford, INS
 12/21/2004 Subpoena Returned-Scott Birch
 12/21/2004 Subpoena Returned-Gary Deulen
 12/21/2004 Subpoena Returned=Michael Dillon
 12/22/2004 Lodged/Memorandum in Support of Motion to Suppress Defendant's Statements to Malinda Gonzales
 12/22/2004 Subpoena Returned-Cam Daggett
 12/22/2004 Subpoena Returned-Timothy Neville
 12/22/2004 Subpoena Returned-Mark Palmer
 12/22/2004 Subpoena Returned-Barbara Coleman
 12/22/2004 Subpoena Returned-Syringa Stark
 Court Minutes Hearing type: Order to Show Cause Hearing
 12/23/2004 date: 12/23/2004 Time: 9:00 am Court reporter: Linda Ledbetter Audio tape number: D11
 12/23/2004 Notice Of Hearing on Def's motion suppress Def's statements to Malinda Gonzalez
 12/23/2004 Hearing result for Order to Show Cause held on 12/23/2004 09:00 AM: Hearing Held
 12/23/2004 Hearing Scheduled (Motion to Suppress 12/29/2004 09:00 AM)
 12/23/2004 Subpoena Returned/ Becky Lopez
 12/23/2004 Lodged: reporter transcript for hearing on December 14th & 15th, 2004
 12/23/2004 Order on Def's motion to suppress Def's statements to law enforcement personnel
 12/27/2004 Subpoena Returned-Malinda Gonzales
 12/27/2004 Subpoena Returned-Jennifer Babbitt
 12/28/2004 Hearing result for Motion to Suppress held on 12/29/2004 09:00 AM: Hearing Vacated
 12/28/2004 Lodged: letter from Bob Pangburn vacating motion to suppress hearing on December 29, 2004
 12/28/2004 Subpoena Returned-John Koth
 12/28/2004 Subpoena Returned-Mark Fields
 12/28/2004 Lodged: Memorandum in opposition to Def's motion to suppress Def's statements made to Malinda Gonzales
 12/29/2004 Hearing result for Status held on 12/29/2004 09:00 AM:

Court Minutes

12/29/2004 Hearing ~~result~~ for Status held on 12/29/2004 09:00 AM:
Hearing ~~Held~~

12/29/2004 Hearing ~~Scheduled~~ (Status/Jury Procedures 01/06/2005
12:00 PM)

12/29/2004 Lodged: ~~Reporter's~~ transcript for hearing on December
23,2004

12/29/2004 Subpoena ~~Returned~~-Dan Tiller

12/29/2004 Summons ~~Issued~~-juror Richard Grandlich

12/29/2004 Summons ~~Issued~~-juror Ruben Lopez

12/29/2004 Summons ~~Issued~~-juror George Paddi

12/29/2004 Summons ~~Issued~~-juror Kimball Luff

12/29/2004 Summons ~~Issued~~-juror Rebecca Austin

12/30/2004 Notice Of ~~Hearing~~

12/30/2004 Subpoena ~~Returned~~-Carlos Ayala

12/30/2004 Notice Of ~~Hearing~~ on Def's motion to suppress Def's
statements to Malinda Gonzales

12/30/2004 Notice Of ~~Hearing~~ on Def's motion to suppress illegally
obtained ~~physical~~ evidence

01/03/2005 Affidavit Of ~~Service~~-subpoena duces tecum for Lt. Greg
Sage

01/03/2005 Motion to ~~shorten~~ time

01/03/2005 Notice Of ~~Hearing~~ on motion to shorten time

01/03/2005 Motion for order to disclose certain documents

01/03/2005 Lodged: ~~Memorandum~~ in support of motion to suppress
illegally ~~obtained~~ physical evidence

01/03/2005 Lodged: ~~State's~~ memorandum regarding jury selection

01/04/2005 Affidavit Of ~~Service~~

01/04/2005 Subpoena Duces Tecum ~~Returned~~

01/04/2005 Certificate Of true copy of subpoena duces tecum

01/04/2005 Return Of ~~Service~~ Ross Kirtley

01/06/2005 Subpoena ~~Returned~~ Served Robin Lehat

01/06/2005 Subpoena ~~Returned~~ Served Leslie Luccesi

01/06/2005 Subpoena ~~Returned~~ Served Russell Nuxoll

01/06/2005 Subpoena ~~Returned~~ Served Janet Sylten

01/06/2005 Subpoena ~~Returned~~ Served Jane Jiminez

01/06/2005 Subpoena ~~Returned~~ Served Cami Mae Bustos

01/06/2005 Subpoena ~~Returned~~ Served Carlos Ayala

01/06/2005 Subpoena ~~Returned~~ Served Mike Oosting

Court Minutes Hearing type: Status/Jury Procedures

01/06/2005 Hearing ~~date~~: 01/06/2005 Time: 12:07 pm Court reporter:
Linda Ledbetter Audio tape number: D12

01/06/2005 Return Of ~~Service~~

01/06/2005 Subpoena ~~Returned~~ Served John Schrader on 12/30/04

01/06/2005 Return Of ~~Service~~

01/06/2005 Subpoena ~~Returned~~ Served Jim Vavold on 1/4/05

01/06/2005 Court Minutes

Court Minutes Hearing type: Motion to Suppress Hearing

01/07/2005 date: 01/07/2005 Time: 9:00 am Court reporter: Linda
Ledbetter Audio tape number: D12

01/07/2005 Subpoena Returned Served Linda Vavold
 01/07/2005 State's Motion to Shorten Time for Notice of Hearing
 01/07/2005 State's Motion to Continue Jury Trial
 01/07/2005 Notice Of Hearing
 01/07/2005 Hearing Scheduled (Motion to Continue 01/10/2005 09:00 AM)
 01/07/2005 Hearing result for Motion to Suppress held on 01/07/2005 09:00 AM: Hearing Held
 01/07/2005 Order on Def's oral motion to remove action before trial IC 19-1801 & notice to the parties
 01/10/2005 State's Objection to Consumption of Sample and Motion to Require Disclosure of Consumed Sample
 01/10/2005 Subpoena Returned Served Jeff Brown
 01/10/2005 Subpoena Returned Served Andrew Stark
 01/10/2005 Court Minutes Hearing type: Motion to Continue Hearing date: 01/10/2005 Time: 1:03 pm Court reporter: Linda Ledbetter Audio tape number: 9393
 01/10/2005 Hearing result for Motion to Continue held on 01/10/2005 09:00 AM: Hearing Held
 01/10/2005 Subpoena Returned-Scott Ward
 01/10/2005 Subpoena Returned-Rob Stiles
 01/10/2005 Subpoena Returned-Amber Moss
 01/10/2005 Subpoena Returned-Kristina Paulette
 01/10/2005 Subpoena Returned-Wayne Niemeyer
 01/10/2005 Subpoena Returned-William Chapin
 01/10/2005 State's 16th Supplemental Response To Request For Discovery
 01/11/2005 Return Of Service
 01/11/2005 Subpoena Returned- Served 1/11/05 Joey Jaramillo
 01/11/2005 Return Of Service
 01/11/2005 Subpoena Returned- Served 1/10/05 Karen Chase
 01/11/2005 Amended order on Def's oral motion to remove action before trial & notice to the parties regarding further proceedings
 01/13/2005 Request to obtain approval to broadcast and/or photograph a court proceeding & order-ABC News in New York
 01/13/2005 Request to obtain approval to broadcast and/or photograph a court proceeding & order-Court TV in New York
 01/14/2005 Subpoena Returned-No Found Consuelo Ceden
 01/14/2005 Amended order re: access to Sarah Marie Johnson
 01/18/2005 Subpoena Returned Robin Lahat
 01/18/2005 Subpoena Returned Carlos Ayala
 01/18/2005 Subpoena Returned Jim Hopkins
 01/18/2005 Subpoena Returned Marguerite Sowersby
 01/18/2005 Subpoena Returned Walt Femling
 01/18/2005 Subpoena Returned Chante Caudle
 01/18/2005 Subpoena Returned Scott Ward
 01/18/2005 Subpoena Returned Noveta Hartmann
 01/18/2005 Subpoena Returned Max Bailey
 01/18/2005 Subpoena Returned Susan Choat
 01/18/2005 Subpoena Returned Autumn Fisher

01/18/2005 Subpoena **Returned** Randy Trenble
 01/18/2005 Subpoena **Returned** Ann Gasaway
 01/18/2005 Subpoena **Returned** Melissa Miller
 01/18/2005 Subpoena **Returned** Tim Richards
 01/18/2005 Subpoena **Returned** Dorothy Schinella
 01/18/2005 Subpoena **Returned** Andrea Karie
 01/18/2005 Subpoena **Returned** Tina Olson
 01/18/2005 Subpoena **Returned** Mark Palmer
 01/18/2005 Subpoena **Returned** George Dondero
 01/18/2005 Subpoena **Returned** Brenda Annen
 01/18/2005 Subpoena **Returned** Karen Chase
 01/18/2005 Subpoena **Returned** Janet Sylten
 01/18/2005 Subpoena **Returned** Linda O'Connor
 01/18/2005 Subpoena **Returned** Mark Fields
 01/18/2005 Subpoena **Returned** Christian Ayala
 01/18/2005 Subpoena **Returned** Pat Alder
 01/18/2005 Subpoena **Returned** Mitch Marcroft
 01/18/2005 Subpoena **Returned** Kjell Elisson
 01/18/2005 Subpoena **Returned** Terri Sanders
 01/18/2005 Subpoena **Returned** Kim Richards
 01/18/2005 Subpoena **Returned** Rachel Richards
 01/18/2005 Subpoena **Returned** Cloyce Corder
 01/18/2005 Subpoena **Returned** Bryan Carpita
 01/18/2005 Subpoena **Returned** Megan Sowersby
 01/18/2005 Subpoena **Returned** Jane Lopez-Jiminez
 01/18/2005 Subpoena **Returned** Becky Lopez
 01/18/2005 Subpoena **Returned** Stu Robinson
 01/18/2005 Subpoena **Returned** Steve Harkins
 01/18/2005 Subpoena **Returned** Ron Taylor
 01/18/2005 Subpoena **Returned** Mark Roemer
 01/18/2005 Subpoena **Returned** Russell Nuxoll
 01/19/2005 Subpoena **Returned** Lorna Kolash
 01/19/2005 Subpoena **Returned** Mike Oosting
 01/19/2005 Subpoena **Returned** Lois Standley
 01/19/2005 Subpoena **Returned** Syringa Stark
 01/19/2005 Subpoena **Returned** Karen Soracco
 01/19/2005 Subpoena **Returned** Mel Speegle
 01/19/2005 Subpoena **Returned** Barbara Coleman
 01/20/2005 State's Third Motion To Compel Discovery
 01/20/2005 Notice Of **Hearing**
 01/20/2005 Hearing **Scheduled** (Motion to Compel 01/24/2005 09:00 AM)
 01/20/2005 State's Motion to Shorten Time for Notice of Hearing
 01/20/2005 Subpoena **Returned** Steve England
 01/20/2005 Subpoena **Returned** Timothy Neville
 01/20/2005 Subpoena **Returned** Cami Fahey
 01/20/2005 Subpoena **Returned** John Koth
 01/20/2005 Subpoena **Returned** Jeff Brown

01/27/2005 Subpoena **Returned** Bruno Santos
 01/27/2005 Subpoena **Returned** Michael Fishman
 01/27/2005 State's 18TH Supplemental Response To Request For Discovery
 01/27/2005 Subpoena **Returned**-Ed Fuller
 01/27/2005 Subpoena **Returned**-Matt Johnson
 01/28/2005 Court **Minutes** Hearing type: Status Hearing date: 01/28/2005 Time: 10:00 am Court reporter: Linda Ledbetter
 01/28/2005 Hearing **Held**
 01/28/2005 Affidavit Of **Service**
 01/28/2005 Subpoena Duces Tecum **Returned**-Greg Sage
 01/28/2005 Affidavit Of **Service**
 01/28/2005 Subpoena Duces Tecum **Returned**-Dennis Dexter or Lt. Mike Fehlman
 01/28/2005 Affidavit Of **Service**
 01/28/2005 Subpoena Duces Tecum **Returned**-Lt. Dennis Dexter or Lt. Mike Fehlman
 01/28/2005 Request to **obtain** approval to broadcast and/or photograph a court proceeding-The Wood River Journal
 01/31/2005 Motion to **exclude** defense witnesses & evidence due to late disclosure
 01/31/2005 State's **motion** to shorten time for notice of hearing
 01/31/2005 Order **granting** motion to shorten time
 01/31/2005 Notice Of **Hearing**
 01/31/2005 Hearing **result** for Status held on 01/31/2005 01:00 PM: Court **Minutes**
 01/31/2005 Hearing **result** for Status held on 01/31/2005 01:00 PM: Hearing **Held**
 01/31/2005 Def's witness & exhibit list
 02/01/2005 Hearing **result** for Jury Trial held on 02/01/2005 09:00 AM: Jury Trial **Started**
 02/01/2005 Court **Minutes**
 02/01/2005 Initial Instructions to the Prospective Jury Part I
 02/02/2005 Court **Minutes**
 02/02/2005 Order
 02/02/2005 Initial Instructions to the Prospective Jury Part II
 02/03/2005 Subpoena **Returned** Rae Whittaker
 02/03/2005 Court **Minutes**
 02/04/2005 State's 19th Supplemental Response To Request For Discovery
 02/04/2005 State's **notice** of intent to seek exclusion of defense witnesses & evidence due to late disclosure
 02/04/2005 Court **Minutes**
 02/04/2005 Subpoena **Returned**-Tina Walthall
 02/04/2005 Subpoena **Returned**-Claudia Hooten
 02/04/2005 Subpoena **Returned**-Debbie Davis
 02/04/2005 Subpoena **Returned**-Katie Metzger
 02/04/2005 Subpoena **Returned**-Brian Perkins
 02/04/2005 Subpoena **Returned**-Kathryn Wallace
 02/04/2005 State's witness list

02/04/2005 Subpoena **Returned**-Gary Craven
 02/04/2005 Subpoena **Returned**-Kassie Weber
 02/04/2005 Subpoena **Returned**-Jim Vavold
 02/04/2005 Subpoena **Returned**-Dean Dishman
 02/04/2005 Subpoena **Returned**-Linda Vavold
 02/04/2005 Subpoena **Returned**-Patricia Dishman
 02/04/2005 Subpoena **Returned**-Jennifer Babbitt
 02/04/2005 Subpoena **Returned**-Cynthia Hall
 02/04/2005 Subpoena **Returned**-Nicole Settle
 02/04/2005 Subpoena **Returned**-Ross Kirtley
 02/04/2005 Subpoena **Returned**-Julia Dupuis
 02/04/2005 Subpoena **Returned**-Helen Speegle
 02/04/2005 Subpoena **Returned**-Dwight Vanhorn
 02/04/2005 Subpoena **Returned**-John Schrader
 02/04/2005 Subpoena **Returned**-Andrew Stark
 02/04/2005 Subpoena **Returned**-Scott Birch
 02/04/2005 Subpoena **Returned**-Alan Dupois
 02/07/2005 Court Minutes
 02/07/2005 Amended **Def's** witness list
 02/07/2005 Preliminary Instructions to the Jury
 02/08/2005 Court Minutes
 02/08/2005 Subpoena **Returned**-Michael Dillon
 02/08/2005 Subpoena **Returned**-Gary Deulen, not served
 02/08/2005 Subpoena **Returned**-Debbie Davis, not served
 02/08/2005 Subpoena **Returned**-Mel Speegle, not served
 02/08/2005 Subpoena **Returned**-Helen Speegle, not served
 02/08/2005 Subpoena **Returned**-Cynthia Hall, not served
 02/08/2005 Subpoena **Returned**-Tina Walthall, not served
 02/08/2005 Subpoena **Returned**-Glen Groben, not served
 02/08/2005 Subpoena **Returned**-Katie Metzger, not served
 02/08/2005 Subpoena **Returned**-Julia Dupois, not served
 02/08/2005 Subpoena **Returned**-Alan Dupois, not served
 02/08/2005 Certification of Material Witness
 02/08/2005 Trial Points & Authorities re: objections to testimony of Walt Femling
 02/08/2005 Subpoena **Returned**-Ariadne Condos
 02/08/2005 Subpoena **Returned**-Bryan Higgason, Jr
 02/09/2005 Court Minutes
 02/10/2005 Court Minutes
 02/11/2005 Court Minutes
 02/14/2005 Court Minutes
 02/15/2005 Court Minutes
 02/15/2005 Lodged: **letter** from Jim Thomas to Doug Werth
 02/15/2005 Motion to **dismiss** witness bail
 02/15/2005 State's **Motion** in limine re: Bruno Santos Dominguez
 02/16/2005 Court Minutes
 02/16/2005 State's 20th Supplemental Response To Request For Discovery

02/16/2005 Lodged: State's memorandum regarding lesser included offenses
 02/17/2005 Court Minutes
 02/17/2005 State's 21st Supplemental Response To Request For Discovery
 02/18/2005 Court Minutes
 02/18/2005 Order to transport defendant-Malinda Gonzalez
 02/22/2005 Court Minutes
 02/22/2005 Lodged: State's memorandum in support of motion in limine
 02/22/2005 State's offered caselaw in support of aider & abetter instruction
 02/22/2005 State's Motion in limine
 02/22/2005 Notice of intent not to introduce contents of October 29, 2003 interview
 02/23/2005 Court Minutes
 02/23/2005 Def's 7th Supplemental Request For Discovery
 02/24/2005 Court Minutes
 02/24/2005 State's 22nd Supplemental Response To Request For Discovery
 02/24/2005 Request to obtain approval to broadcast and/or photograph a court proceeding
 02/25/2005 Court Minutes
 02/25/2005 Def's second amended witness list
 02/25/2005 Objection to State's motion in limine & memorandum in support
 02/28/2005 Court Minutes
 03/01/2005 Court Minutes
 03/02/2005 Court Minutes
 03/03/2005 Court Minutes
 03/03/2005 Subpoena Returned-Jeannie Frost
 03/04/2005 Court Minutes
 03/07/2005 Court Minutes
 03/07/2005 Defendant's third amended witness list
 03/08/2005 Court Minutes
 03/08/2005 Defendant's proposed jury instruction
 03/09/2005 Court Minutes
 03/09/2005 Lodged: State's memorandum in support of aiding & abetting instruction
 03/10/2005 Court Minutes
 03/10/2005 Order granting motion to dismiss witness bail
 03/10/2005 Ex Parte Motion to Quash Witness Bond
 03/11/2005 Court Minutes
 03/14/2005 Court Minutes
 03/14/2005 Def's objections to the Court's findings of fact in support of jury instruction No. 30
 03/14/2005 Final Instructions to the Jury
 03/15/2005 Court Minutes
 03/15/2005 Court Minute Entry (Supplemental)
 03/15/2005 Court Minute Entry (supplemental)
 03/15/2005 Court Minute Entry (supplemental)

03/15/2005 Post Verdict Jury Instruction
 03/16/2005 Court Minutes
 03/16/2005 Verdict Form
 03/16/2005 Found Guilty After Trial
 03/16/2005 Hearing Scheduled (Sentencing 05/19/2005 09:00 AM)
 03/17/2005 Notice of sentencing hearing & order regarding preparation
 for sentencing hearing
 03/17/2005 Exhibit list-receipt
 03/21/2005 Hearing Scheduled (Status 03/24/2005 01:00 PM) Status
 regarding sentencing
 03/21/2005 Notice Of Hearing
 Court Minutes Hearing type: Status Hearing date:
 03/24/2005 03/24/2005 Time: 1:00 pm Court reporter: Linda Ledbetter
 Audio tape number: d19
 03/24/2005 Notice Of Hearing
 Hearing Scheduled (Status 04/19/2005 01:30 PM)
 03/24/2005 regarding sentencing, may be held by phone conference
 per 43.1 ICR
 Hearing Scheduled (Status 05/17/2005 01:30 PM)
 03/24/2005 regarding sentencing, may be held by phone conference
 per 43.1 ICR
 Hearing Scheduled (Status 06/14/2005 01:30 PM)
 03/24/2005 regarding sentencing, may be held by phone conference
 per 43.1 ICR
 03/24/2005 Hearing result for Status held on 03/24/2005 01:00 PM:
 Court Minutes Status regarding sentencing
 03/24/2005 Hearing result for Status held on 03/24/2005 01:00 PM:
 Hearing Held Status regarding sentencing
 03/25/2005 Motion to relocate the Def to the Ada County Jail
 03/28/2005 Motion for new trial
 03/28/2005 Motion for judgment of acquittal
 03/28/2005 Motion for arrest of judgment
 03/30/2005 Sentencing 06/29/2005 09:00 AM
 03/30/2005 Hearing Scheduled (Motion 04/12/2005 02:30 PM) for
 relocation
 03/30/2005 Notice Of Hearing
 03/30/2005 Lodged Memorandum
 Letter from Bob Pangburn advising the Court they have
 04/07/2005 chosen Richard Worst, PHD to perform psychological
 evaluation on Def
 04/07/2005 Lodged: Memorandum objecting to Def's motion for
 judgment of acquittal
 04/07/2005 Lodged: Memorandum objecting to Def's motion for arrest
 of judgment
 04/07/2005 Lodged: Memorandum objecting to Def's motion for a new
 trial
 Motion for OTSC why Sheriff Walt Femling, Lieutenant
 04/11/2005 Greg Sage and Deputy Bear Dachtler & additional persons
 yet unknown should not be held in contempt of court
 04/11/2005 Affidavit of Linda Dunn
 04/11/2005 Affidavit of Patrick Dunn
 04/11/2005 Motion for access to client in accordance with constitutional
 guarantees

04/11/2005 Motion to shorten time for notice of hearing
 04/12/2005 Continued (Motion 04/12/2005 02:00 PM) for relocation
 04/12/2005 Hearing result for Motion held on 04/12/2005 02:00 PM: Court Minutes for relocation
 04/12/2005 Hearing result for Motion held on 04/12/2005 02:00 PM: Hearing Held for relocation
 04/14/2005 Hearing Scheduled (Motion 05/03/2005 01:00 PM) Motion for a new trial
 04/14/2005 Hearing Scheduled (Motion 05/03/2005 01:00 PM) Motion for acquittal
 04/14/2005 Hearing Scheduled (Motion 05/03/2005 01:00 PM) Motion for Arrest of Judgment
 04/14/2005 Notice Of Hearing
 04/15/2005 Hearing Scheduled (Order to Show Cause 04/27/2005 10:00 AM)
 04/18/2005 Hearing Scheduled (Order to Show Cause 04/27/2005 10:00 AM)
 04/18/2005 Order To Show Cause - Issued sua sponte
 Hearing result for Status held on 04/19/2005 01:30 PM:
 04/19/2005 Court Minutes regarding sentencing, may be held by phone conference per 43.1 ICR
 Hearing result for Status held on 04/19/2005 01:30 PM:
 04/19/2005 Hearing Held regarding sentencing, may be held by phone conference per 43.1 ICR
 04/25/2005 Order for Transport
 04/27/2005 Hearing result for Order to Show Cause held on 04/27/2005 10:00 AM: Court Minutes
 04/27/2005 Hearing result for Order to Show Cause held on 04/27/2005 10:00 AM: Hearing Held
 04/29/2005 Lodged Memorandum in Support of Motion for New Trial
 04/29/2005 Lodged Memorandum in Support of Motion for Judgment of Acquittal
 04/29/2005 Affidavit of Patrick Dunn
 04/29/2005 Affidavit of Linda Dunn
 05/02/2005 Affidavit of Anita Moore
 05/02/2005 Lodged Supplemental Memorandum in Support of Motion for New Trial
 05/03/2005 Hearing result for Motion held on 05/03/2005 01:00 PM: Court Minutes Motion for Arrest of Judgment
 05/03/2005 Hearing result for Motion held on 05/03/2005 01:00 PM: Hearing Held Motion for Arrest of Judgment
 05/03/2005 Continued (Motion 05/17/2005 01:00 PM) Motion for a new trial
 05/12/2005 Subpoena Returned-Hal Cloutier
 05/12/2005 Subpoena Returned-Steve McKissick
 05/13/2005 Affidavit of Jurors
 05/13/2005 Lodged Supplemental Memorandum Objecting to Defendant's Motion for a New Trial
 05/16/2005 Request to Obtain Approval to Broadcast and/or Photograph Court Proceedings
 05/16/2005 Order to Broadcast and/or Photograph Court Proceedings
 05/17/2005 Affidavit of Juror in the Sarah Marie Johnson Trial

05/17/2005 Hearing **result** for Motion held on 05/17/2005 01:30 PM:
 Court **Minutes** Motion for a new trial
 05/17/2005 Hearing **result** for Motion held on 05/17/2005 01:30 PM:
 Hearing **Held** Motion for a new trial
 05/20/2005 Affidavit of juror in the Sarah Marie Johnson trial
 06/02/2005 Lodged **Letter**
 06/07/2005 Motion for **order** to disclose certain documents
 06/07/2005 Notice Of **Hearing**
 06/07/2005 Hearing **Scheduled** (Motion 06/14/2005 01:30 PM) motion
 for order to disclose certain documents
 06/10/2005 State's **Objection** to Payment of Services and Motion to
 Reconsider Previous Authorizations of Payment
 06/10/2005 State's **Objection** to Motion for Order to Disclose Certain
 Documents
 06/10/2005 Notice Of **Hearing**
 06/10/2005 Hearing **Scheduled** (Motion 06/14/2005 01:30 PM) State's
 Motion to **Reconsider** Previous Authorization of Payment
 06/14/2005 Hearing **result** for Motion held on 06/14/2005 01:30 PM:
 Court **Minutes** motion for order to disclose certain
 documents
 06/14/2005 Hearing **result** for Motion held on 06/14/2005 01:30 PM:
 Hearing **Held** motion for order to disclose certain
 documents
 06/14/2005 Motion to **Recuse** Prosecutor and Memorandum in Support
 06/15/2005 Hearing **Scheduled** (Motion 06/23/2005 10:00 AM)
 06/15/2005 Notice Of **Hearing**
 06/15/2005 Subpoena **Issued**-Doug Nelson
 06/15/2005 Request to Obtain Approval to Broadcast and/or
 Photograph a Court Proceeding
 06/15/2005 Order to Broadcast or Photograph a Court Proceeding
 06/15/2005 State's Motion to Obtain Certain Documents from Dr. Worst
 06/15/2005 State's Motion to Shorten Time for Notice of Hearing
 Court **Minutes** Hearing type: Motion Hearing date:
 06/17/2005 06/17/2005 Time: 11:15 am Court reporter: Linda Ledbetter
 Audio tape number: d28
 06/17/2005 Lodged **Memorandum** Objecting to Defendant's Motion to
 Recuse **Prosecutor**
 06/17/2005 Order on State's Motion to Obtain Certain Documents from
 Dr. Worst
 06/17/2005 Order on **Defendant's** Motion to Recuse Prosecutor
 06/17/2005 Order **Granting** Motion to Shorten Time
 06/17/2005 Hearing **Held**
 06/21/2005 Order for **Request** to Obtain Approval to Broadcast and/or
 Photograph a Court Proceeding
 06/22/2005 Order **Request** to Obtain Approval to Broadcast and/or
 Photograph a Court Proceeding
 06/27/2005 Order **Request** to Obtain Approval to Broadcast and/or
 Phototaph A Court Proceeding
 06/28/2005 Order **Request** to Obtain Approval to Broadcast and/or
 Photograph A Court Proceeding
 Court **Minutes** Hearing type: Sentencing Hearing date:
 06/29/2005 06/29/2005 Time: 9:00 am Court reporter: Linda Ledbetter
 Audio tape number: D29

06/30/2005 Sentenced To Incarceration (I18-4001-I Murder I)
Confinement terms: Credited time: 609 days.

06/30/2005 Sentenced To Incarceration (I18-4001-I Murder I)
Confinement terms:

06/30/2005 STATUS CHANGED: closed pending clerk action

06/30/2005 Sentenced To Incarceration (I19-2520 Enhancement-use
Of Deadly Weapon Comm Of Felony) Confinement terms:
Penitentiary determinate: 15 days.

06/30/2005 Judgment of conviction upon a jury verdict of guilty to two
felony counts, and order of commitment

06/30/2005 Civil Judgment for crime of violence

06/30/2005 Order of restitution

06/30/2005 Order transmitting PSI

06/30/2005 Subpoena Returned Served Officer Frasier Mini-Cassia
Justice Center

07/01/2005 Subpoena Returned Served Rob Neiwert

07/01/2005 Subpoena Returned Served Clay Anderson

07/01/2005 Subpoena Returned Served Sheldon Ray Wilkinson

07/06/2005 Miscellaneous Payment: For Making Copy Of Any File Or
Record By The Clerk, Per Page Paid by: Kneeland Korb &
Collier Receipt number: 0003913 Dated: 7/6/2005 Amount:
\$8.00 (Check)

07/06/2005 Miscellaneous Payment: For Certifying The Same
Additional Fee For Certificate And Seal Paid by: Kneeland
Korb & Collier Receipt number: 0003913 Dated: 7/6/2005
Amount: \$1.00 (Check)

07/06/2005 State's response to Court's inquiry regarding defense
expert payments

07/06/2005 Order authorizing payment to Richard W. Worst, M.D.
Lodged: Memorandum in support of State's objection to
payment of services & motion to reconsider previous
authorizations of payment

07/07/2005 Lodged: Memorandum in opposition to government's
objection & motion re: defense attorney fees

07/08/2005 State's motion for Court review of investigative services

07/08/2005 Amended judgment upon a jury verdict of guilty to two
felony counts, and order of commitment

07/11/2005 2nd bill from Dr. Richard Worst

07/19/2005 Order authorizing payment to Richard W. Worst, MD

07/29/2005 Miscellaneous Payment: For Making Copy Of Any File Or
Record By The Clerk, Per Page Paid by: david kerrick &
assoc Receipt number: 0004455 Dated: 07/29/2005
Amount: \$11.00 (Check)

07/29/2005 Miscellaneous Payment: For Certifying The Same
Additional Fee For Certificate And Seal Paid by: david
kerick & assoc Receipt number: 0004455 Dated:
07/29/2005 Amount: \$2.00 (Check)

08/04/2005 Hearing Scheduled (Motion 08/25/2005 10:00 AM) motion
re: Pat Dunn's expenses

08/04/2005 Notice Of Hearing

08/17/2005 Notice Of Appeal

08/17/2005 Appealed To The Supreme Court

08/17/2005 STATUS CHANGED: Inactive

08/19/2005 Notice & order appointing State Appellate Public Defender on appeal

08/22/2005 Notice Of Hearing

08/22/2005 Continued (Motion 09/13/2005 02:00 PM) motion re: Pat Dunn's expenses

08/25/2005 Order on State's objection to payment of services & order on motion to reconsider previous authorizations of payment

09/02/2005 Remittitur-2 appeal cases were opened, one dismissed by Supreme Court

09/13/2005 Court Minutes Hearing type: Motion Hearing date: 9/13/2005 Time: 2:00 pm Court reporter: Linda Ledbetter Audio tape number: 9399

09/13/2005 Hearing result for Motion held on 09/13/2005 02:00 PM: Hearing Held motion re: Pat Dunn's expenses

10/07/2005 Patrick Dunn's billings

10/07/2005 Affidavit of Patrick Dunn

10/07/2005 Affidavit of Mark Rader

10/07/2005 Affidavit of Bob Pangburn

10/07/2005 Motion for order to show cause why Def's counsel shall not be held in contempt of court

10/14/2005 Notice Of Demand Letter And Request For Payment

10/21/2005 Order for payment of Peter Smith, Investigator

10/24/2005 Notice Of Intent To Use Letter As Evidence

11/02/2005 Order governing further proceedings on claimed attorneys fees & expenses

11/02/2005 Addendum to order governing further proceedings on claimed attorneys fees & expenses

11/04/2005 Hearing Scheduled (Hearing Scheduled 11/23/2005 09:00 AM) argument or additional evidence

11/07/2005 Order on State's motion for court review of investigative services & order on Def's motion for reconsideration of Court's prior oral ruling

11/15/2005 State's Objection To Payment Of Services Without Additional Clarification

11/23/2005 Court Minutes Hearing type: Hearing Scheduled Hearing date: 11/23/2005 Time: 9:04 am Court reporter: Susan Israel Audio tape number: D42

11/23/2005 Hearing result for Hearing Scheduled held on 11/23/2005 09:00 AM: Hearing Held argument or additional evidence

11/23/2005 Hearing Scheduled (Clerk's Status 12/06/2005 09:00 AM) Pangburn's statement filed? under advisement

12/15/2005 Lodged: State's objection & memorandum in support of denial of additional funds for defense experts

12/22/2005 Lodged: letter to counsel from the Court setting deadline re: payments

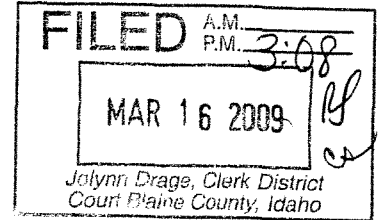
01/31/2006 Order on Defendant's motions for additional funds for a criminology expert & for payment to Michael Howard; and additional funds for firearms/blood spatter expert and for payment to Rocky Mink

01/31/2006 Final Appealable Order re: attorney's fees; in particular, order on attorney Bob Pangburn's failure to comply iwth the Court's August 25, 2005, order on State's objection to payment of services & order on motion to reconsider authorizations of payment; and order on attorney Bob

Pangburn's affidavits in support of fee application filed May 9, 2005, June 9, 2005, July 11, 2005 and November 14, 2005 and affidavit in support of expenses application filed November 16, 2005

04/10/2006 Order
05/04/2006 Remittitur-appeal dismissed
05/04/2006 STATUS CHANGED: closed pending clerk action
Second Amended Judgment of Conviction upon a Jury
07/05/2006 Verdict of Guilty to Two Felony Counts, and Order of Commitment
07/06/2006 Notice & order appointing State Appellate Public Defender on Appeal
07/28/2006 Appealed To The Supreme Court
07/28/2006 Notice Of Appeal
07/28/2006 STATUS CHANGED: Inactive
08/07/2006 Order
09/12/2006 Minute Entry
01/24/2007 State's Motion to release exhibits
01/31/2007 Objection to State's motion to release exhibits & statement in support
02/26/2007 State's motion to dismiss, State's motion to release exhibits
03/01/2007 Order dismissing State's motion to release exhibits
03/21/2007 Order granting motion to augment & suspend the briefing schedule
Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Bob Pangburn
05/31/2007 Receipt number: 0003313 Dated: 5/31/2007 Amount: \$3.00 (Credit card)
Miscellaneous Payment: Technology Cost - CC Paid by: Bob Pangburn
05/31/2007 Receipt number: 0003313 Dated: 5/31/2007 Amount: \$3.00 (Credit card)
06/27/2008 Supreme Court of the State of Idaho 2008 Opinion No. 89
08/04/2008 Remittitur
08/04/2008 Remanded
08/04/2008 STATUS CHANGED: closed pending clerk action
11/10/2008 Dunns Motion for Prejudgment Interest
11/10/2008 Affidavit of Patrick Dunn in Support of Dunns Motion for Post Judgment Interest
Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: ABC News
02/10/2009 Receipt number: 0008070 Dated: 2/10/2009 Amount: \$52.00 (Credit card)
Miscellaneous Payment: Technology Cost - CC Paid by: ABC News
02/10/2009 Receipt number: 0008070 Dated: 2/10/2009 Amount: \$3.00 (Credit card)

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-006-324
Petitioner)	
)	
vs.	)	FIRST AMENDED PETITION
	)	FOR POST-CONVICTION RELIEF
STATE OF IDAHO,)	
)	
<u>Respondent</u>)	

COMES NOW Petitioner by and through her attorney, CHRISTOPHER P. SIMMS, and files this, her FIRST AMENDED PETITION FOR POST-CONVICTION RELIEF, pursuant to the Uniform Post-Conviction Procedure Act, I.C. 19-4901 et seq., and Rule 57 of the Idaho Criminal Rules, and other applicable Court rules and constitutional and statutory law and in support thereof states as follows;

1. Petitioner re-alleges and adopts as if fully stated herein, each averment made in her initial Petition for Post Conviction Relief filed on or about April 19, 2006.
2. Petitioner remains in the custody of the Pocatello Women's Correctional Center.
3. The Fifth District Court for the State of Idaho, County of Blaine imposed judgment and sentence on Petitioner. Petitioner's case was conducted and tried in the Fourth District Court for the State of Idaho, Count of Ada, City of Boise, pursuant to an Order changing venue.

4. The Case Number and the Offense or Offenses for which the sentence was imposed:

(a) Case Number CR-2003-001820

(b) Offense Convicted: Murder in the First Degree, with Firearm Enhancement – Two Counts

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Date of Sentence: June 30, 2005.

(b) Terms of Sentence: Determinate Life, Plus Fifteen – Two Counts

6. A finding of Guilt was made after a jury trial.

7. The Judgment of Conviction or Imposition of Sentence was not appealed. Although a Notice of Appeal was filed from the District Court's Amended Judgment of Conviction upon a Jury Verdict of Guilt to Two Felony Counts and Order of Commitment. That appeal was dismissed as being untimely from the actual Judgment of Conviction.

8. Petitioner bases her Amended Application for Post Conviction Relief upon the following:

(a) Petitioner is innocent of the offense.

(b) The Court was without jurisdiction to try, convict and sentence Petitioner.

(c) Violations of Petitioner's Right to Due Process of Law.

(d) Ineffective Assistance of Counsel, both at Trial and on Direct Appeal.

(e) Discovery of new evidence.

9. A Petition for Habeas Corpus has not been filed in State or Federal Court. There are no other petitions, motions or applications, known to Petitioner, before any other

Court. This Petition presents both Federal and State Constitutional claims based on “due process” (substantive and procedural) and “liberty” interests of Petitioner and are each and all supported by allegations of fact made herein, in the supporting affidavits, motions and memorandum of law filed contemporaneously herewith and/or in support hereof, all of which point to the real possibility of constitutional error in Petitioner’s trial. The newly discovered evidence claims each and all, if presented to a jury would probably produce an acquittal, and each includes by this reference, if not otherwise, independent constitutional violations in the underlying trial. The constitutional errors complained of herein have resulted in the conviction of an actually innocent person. It is Petitioner’s intention, by this Petition for Post-Conviction Relief, to obtain a new trial, thereby correcting any constitutional defect in the original trial, or to exhaust her state court remedies.

10. Petitioner notes that discovery is not fully initiated and additional factual material may develop to support the allegations made herein, or new allegations not asserted herein if discovery is ordered as requested by Petitioner. More, specifically, Motions for Orders of Discovery relating to Newly Discovered Fingerprint Evidence, Independent Judicial Investigation, Appointment of a Fingerprint Expert, Appointment of an Investigator, Appointment of a Psychiatric Expert and Appointment of a Legal Expert have been filed and are pending. Additional affidavits and records are expected to be produced and submitted in support of this Amended Petition upon the granting of those Motions which state the particulars supporting Petitioner’s right to discovery to protect her substantial rights, are tailored to prevent unnecessary discovery and are limited in

scope to develop admissible evidence in support of the allegations made below, that are fully supported by the record.

PETITIONER IS INNOCENT

11. Petitioner has maintained her innocence of the offense charged, before, during and after her trial, conviction and sentence as to the charges in the underlying criminal matter and continues to deny any involvement with the crime.

TRIAL COURT LACKED JURISDICTION TO TRY, CONVICT AND SENTENCE PETITIONER

12. Petitioner, Sarah Marie Johnson, was born on [REDACTED], was sixteen years old at the time her parents, Alan and Diane Johnson were tragically shot to death in their home. The Uniform Juvenile Corrections Act, I.C. 20-501 et seq. provides for the exclusive jurisdiction of persons under eighteen years old. Petitioner recognizes that I.C. 20-509 provides for adult criminal prosecution of juveniles, age fourteen (14) to age eighteen (18), who are alleged to have committed murder. However, section 20-508, on its face, affords all juveniles the right to full investigation, a hearing and the discretion of a magistrate to waive jurisdiction under the juvenile corrections act over the juvenile and order that the juvenile be held for adult criminal proceedings when a juvenile is alleged to have committed any of the crimes enumerated in section 20-509, Idaho Code. No waiver hearing occurred in the instant case, nor did a Magistrate order Petitioner held for adult criminal proceedings.

(a) Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to move for dismissal or otherwise raise this jurisdictional issue. But for counsel's rendering of ineffective assistance of counsel, there is reasonable probability that the outcome of the trial court proceeding would have been different.

VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW

13. Prior to trial, it is believed, the District Court Judge reviewed transcripts of the Grand Jury proceedings, reviewed police reports and conducted an independent investigation into the facts of the homicides, which gave rise to the charges being brought against the Petitioner. The District Court Judge's responsibility as a neutral and detached arbiter of the proceedings was compromised when the Judge familiarized himself with the facts surrounding the case by this independent judicial investigation. The Canons of Judicial Conduct prohibit such an independent investigation and create at least an appearance that a judge may consider facts not admitted into evidence and of an unfair trial. Thus, Petitioner was denied her right to a neutral, unbiased judge presiding over the trial proceedings because the Honorable Judge Wood personally investigated the case. The bias is highlighted in the Court's recitation of "facts" allegedly supporting submission to the jury of an aiding and abetting instruction, wherein the Court recites facts not in evidence, and reaches conclusion not supported by evidentiary facts. (See Transcript of Appeal, [hereafter "Transcript."] Pgs 6019-6172, "Final Jury Instruction Conference", Supplemental Transcript on Appeal [hereafter "Supp. Trans."] Pgs. 446-454) His Honor betrays his bias against Petitioner, and consideration of facts not in evidence, during argument on Defendant's Motion for Acquittal under Rule 29, when it is stated, "And what's **always** occurred to me in this case is, well, by the evidence presented, did the defendant commit these crimes by herself, or did the defendant have some help," and "The circumstantial evidence in this case is as strong as a 40 acre field of garlic in full bloom..." and "...and there's no evidence that excludes the defendant. There is not one piece of evidence that excludes the defendant from the commission of

this crime..." (See Supp. Transcript Pgs. 447, 448 & 450; Affidavits of Rader & Dunn, Exhibits 1 & 2) Further indicating a pre-determination or consideration of facts not in evidence was His Honor's comment concerning Petitioner's inability to maintain her composure during trial, "...there are other family members, as I understand it, present who are not conducting themselves in that fashion." (See Transcript Pg 1997)

(a) Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to move for disqualification for cause of Judge Woods, under the criminal rules, based on the facts stated above. Had Trial Counsel properly moved to disqualify the Honorable Judge Wood based upon his personal investigation of the case, the Petitioner would have had a neutral and detached judge presiding over her case, ensuring a fair trial and complying with her right to due process. (See Affidavits of Mark Rader & Patrick Dunn) But for Trial Counsel's rendering of ineffective assistance of counsel, there is reasonable probability that the outcome of the trial court proceeding would have been different.

14. The Court in violation of Petitioner's right of an accused to confront adverse witnesses as safeguarded by the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution, impermissibly limited Petitioner's right to effectively cross-examine Bruno Santos by prohibiting questioning in regard to matters of impeachment, including the right to expose a prosecution witness's possible bias and motive for testifying so the jury can make an informed judgment as to the weight to be given the witness's testimony. But for the Court's constitutional impermissible limitation of the right to fully confront the witnesses against Petitioner it is reasonably likely that the outcome of the trial court proceeding would have been different. More specifically, during a February 15, 2005 hearing on the State's Motion In limine concerning cross-examination of Bruno Santos, the Court ordered the defense to refrain from cross-examining this critical witness regarding broad subject areas upon Santos implied

invocation of the Fifth Amendment right to refrain from compulsory self-incrimination.
(Transcript Pgs. 2737-2760)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

15. It should be noted that Trial Counsel Bobby Eugene Pangburn is suspended from the practice of law in the State of Idaho, (See Idaho State Bar and Idaho Law Foundation, Incorporated, Attorney Roster Search Results attached Exhibit 3) and in the State of Oregon. (See Oregon Disciplinary Proceeding attached Exhibit 4) The specific allegations of ineffective assistance of counsel made herein stem from an overall lack of diligence, failure to investigate the facts and law of the case, chronic tardiness and unpreparedness for court proceedings, including trial, all of which together resulted, cumulatively and individually, in ineffective assistance of Trial Counsel in violation of Petitioner's rights, in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution. Each allegation below, whether specifically alleged therein, or here by reference includes the assertion that Trial Counsels', or Direct Appeal Counsels' conduct fell below the standard of objective reasonableness and that Petitioner was prejudiced by counsels' conduct. None of the asserted acts of counsel falling below the objective standard can be construed as strategic or tactical in the context presented but are each and all the result of inadequate investigation and preparation, and are hereby strictly asserted as such.

16. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to move the Court for a continuance of Petitioner's trial in order to investigate and prepare an adequate defense, when it became clear the State delayed its

disclosure of material evidence until immediately prior to trial, causing counsel to proceed to trial despite inadequate preparedness. (*See* Affidavit of Mark Rader) But for Trial Counsels' rendering of ineffective assistance of counsel, there is a reasonable probability that the outcome of the trial court proceeding would have been different. The following are specific instances of how and why the outcome of the trial would have been different had trial counsel moved for a continuance due to late disclosure.

a. Due to the State's delay in disclosing evidence, Trial Counsel was made aware, just prior to trial, of the Prosecution's intention to offer testimony that a comforter, that would have contained physical evidence, had been discarded and not gathered as physical evidence. Due to Trial Counsel's failure to request a continuance, Trial Counsel was inadequately prepared to cross-examine the State's witnesses about the alleged comforter. Specifically, whether a hole on the comforter was a bullet hole and whether a sheet and or comforter covered the head of Diane Johnson thereby effecting blood splatter. But for Trial Counsel's failure to adequately investigate and failure to adequately prepare, i.e. ineffective assistance of counsel, there is a reasonable probability that Petitioner would not have been convicted. (*See* Affidavit of Mark Rader)

b. Trial Counsel should have moved the Court to continue the trial based on the State's late disclosure of evidence, and the failure to do so deprived Petitioner of the time necessary to adequately prepare to effectively cross-examine the State's expert forensic witness. But for Trial Counsel's failure to prepare and failure to move for a continuance in order to do so, there is a reasonable probability that Petitioner would have been able to discredit the expert forensic witness, and Petitioner would not have been convicted. (*See* Affidavit of Mark Rader) This allegation of ineffective assistance includes Trial Counsel's failure to object to the re-enactment proffered by the States' forensic expert Rod Englert, as without adequate foundation. Mr. Englert's re-enactment and opinion of Petitioner's guilt impermissibly went to the ultimate issue thereby invading the province of the jury. (*See* Transcript Pg. 4204)

c. As a result of failing to request a continuance following the delayed disclosure of material evidence, Trial Counsel failed to become knowledgeable of the relevant law regarding the necessary foundation for admission of scientific evidence, was inadequately prepared to present adequate support for its proffered expert testimony regarding the blood splattering evidence, failed to adequately investigate the scientific basis of a proffered experiment and failed to adequately investigate the relevant evidence following the State's delayed disclosure. Trial Counsel proposed to the District Court an experiment re-creating the homicides using a coconut as a substitute for a human head. The District Court denied Trial

Counsel's request finding that there was no showing that an experiment using a coconut could adequately re-create the alleged crime. Because of the State's delayed disclosure of material evidence and Trial Counsel's failure to adequately research, investigate, and prepare, as well as move the Court for a continuance in order to do so, the defense was unable to properly rebut the State's evidence. For example, Trial Counsel was unable to consult with any experts and properly present an experiment that would have met evidentiary standards and would have been admissible in the District Court. But for Trial Counsel's failure to adequately investigate and prepare, including but not limited to, researching relevant law on the issue of admissibility, there is a reasonable probability that Petitioner could have rebutted the State's claims regarding blood splatter evidence and would not have been convicted. (*See* Affidavit of Mark Rader and Transcript Pgs. 4503-4508)

d. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to provide expert testimony as to comforters. Trial Counsel requested the ability to provide evidence of a forensic experiment showing the effects of a contact gunshot from a high-powered rifle on a sheet and comforter at the proximity that the State asserted occurred in this case. The District Court denied Trial Counsel's request because Trial Counsel could not provide evidence that the comforter used in the experiment was the same type of comforter that the State destroyed. Trial Counsel was ineffective in failing to present to the District Court evidence showing that the type of comforter used in the experiment would not have made a difference to the relevance of the experiment and thus Trial Counsel failed to get the experiment into evidence. But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (*See* Affidavit of Mark Rader)

17. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately prepare and investigate and to cross-examine the State's witnesses for the relevance and accuracy of their testimony and or to make any effort to attack witness veracity, with factual inconsistencies from prior statements or testimony, that were known, or which should have been known by Trial Counsel. The names of the witnesses in question are articulated in the Affidavits of Mark Rader and Patrick Dunn, and include but are not limited to Matt Johnson, Alan & Julia Dupuis, EMT Schell Eliison, Sherrif Walt Femling, Detective Steve Harkin, Bruno Santos,

Consuelo Ceden, Glenda Osuno, Luis Ramirez, (aka Juan Gonzales) Jane Lopez, Becky Lopez and Carlos Ayala, and also include officers Raul Ornelas, and Stu Robinson. (See transcript and Affidavits of Patrick Dunn) But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (See Affidavit of Mark Rader) The following are specific instances and examples of how and why the outcome of the trial would have been different but for Trial Counsel's ineffective assistance in cross examination. (See also Affidavit of Patrick Dunn regarding Trial Counsel's chronic unpreparedness)

a. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately cross-examine the police on their testimony that they engaged in an adequate investigation into other possible perpetrators. But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (See Affidavits of Mark Rader & Patrick Dunn) The interrogating Trial Counsel clearly had not fully reviewed the police reports to highlight the absence of a complete investigation into Bruno Santos, his family and associates, or the possible involvement of Matt Johnson. The following are examples;

- i. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately cross-examine Detective Steve Harkin who stated that he had personally spoken with Bruno Santos over 100 times within the last year. Clearly, the police reports and supplements do not support this bald assertion, yet Trial Counsel failed to even attempt to impeach Detective Harkin. Trial Counsel failed to examine Detective Harkins regarding the lack of depth to the search of Santos residence, outside dumpster or failure to acquire fingerprints from his known associates, nor was the Detective questioned about the inconsistencies in statements made by Santos family members, including his mother and cousin. (See Transcript Pgs 2169-2244)
- ii. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately cross-examine Officer Raul Ornelas who

testified regarding footprints allegedly observed in wet grass in the back yard. Specifically, Trial Counsel failed to point out the Tim Richards, the neighbor who first responded to the scene had walked the very area of the back yard later observed by Ornelas, and further failed to highlight the fact that Ornelas concluded that the footprints were made by more than one person, thereby pointing blame from Petitioner alone and onto unidentified murderers. (See Transcript pg 1607, 1721-1736)

- iii. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately cross-examine the Blaine County Sheriff who made a statement during the early stages of the investigation to the effect that it was vital that police find a suspect in order to prevent a negative perception of the Sun Valley area from outsiders who may have decided not to visit if the crime went unsolved. This statement was vital to Petitioner's defense as it showed that law enforcement personnel were more interested in placing a suspect into custody than to find the perpetrator of the crimes. But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (See Affidavits of Mark Rader and Patrick Dunn)
- iv. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to adequately cross-examine Matt Johnson. During the investigation hereof evidence was discovered that Matt Johnson made false statements to police, and provided false testimony during the trial of Sarah Johnson. This information was provided to Bob Pangburn, the lead trial attorney and he failed to act in any affirmative manner to utilize the information which would have directed suspicion toward Matt Johnson and away from Sarah Johnson. (See Affidavit of Patrick Dunn) More specifically, Matt Johnson stated that his girlfriend Julie Weseman woke him up with a call at 6:15 A.M. to inform him about the murders. Cell phone records show that Matt called Julie's home phone at 6:09 AM and again at 6:10 AM. The 6:10 AM call lasted 2 minutes. Matt provided this to police as the call from Julie when it was Matt calling Julie. Matt then received a call from Julie Weseman at 6:13 AM from Julie's cell phone. This indicated that Matt's statement of being awakened by Julie is inconsistent with the phone records. Matt's statement is that he waited for Julie Weseman and the Laititi sisters to drive down from Coeur d'Alene to drive him to Bellevue. His statement is that they left Moscow

about 8:00 a.m. His girlfriend states that they left Moscow at approximately 1:00 PM. Seila Latititi, Julie's friend who drove to Bellevue with Matt, stated that they left in early afternoon. Her Sister Selina, who also drove to Bellevue with them, stated that they left at approximately 1:00 PM. Statements also indicate that Matt Johnson was in the Riggins area Saturday and Sunday before the murders. Even with this information, and supporting documentation Trial Counsel failed to cross examine Matt Johnson relating to these false statements made to police on the day his parents were murdered. (See attached Bates Stamped pgs 100-104, Exhibit 5, & 4388-4389 Exhibit 6, Supplemental Police Reports) Nor did Trial Counsel cross-examine police witnesses regarding their lack of follow-up investigation into Matt Johnson.

In addition to the above shortcomings of Trial Counsel's cross-examination of Matt Johnson, Trial Counsel failed to elicit from Johnson that Sarah Johnson did not know how to load a bolt action rifle, and did not like to shoot. (See Bates Stamped Pgs. 1460-1461, Exhibit 7, & 1476 Exhibit 8, Supplemental Police Report) Furthermore, Trial Counsel failed to draw attention to the conflict between Matt Johnson's prior statements that he had been in Mel Speegle's closet to obtain a tape measure and hammer, when Speegle had stated to police no such tools were or could have been in his closet. (See Attached Bates Stamped Pgs. 125-126, Exhibit 9, 1479, Exhibit 10, & 1725-1727, Exhibit 11, Supplemental Police Report)

- v. Mr. Pangburn had been provided information based on prior statements of Consuelo Cedenó wherein she insisted her son Bruno Santos had not driven the car the morning of the murders because there was dew on the windshield. Further, Ms. Cedenó asserted in pre-trial statements that she checked the mileage on the vehicle to see if Bruno was lying about where he had been. (See Bates Stamped Pgs. 3026-3027, Exhibit 12, Supplemental Police Report) Ms. Cedenó testified at trial that she didn't pay attention to such things. (See Transcript pg 2776) Yet, Trial Counsel failed to cross-examine Ms. Cedenó. Furthermore a discrepancy existed, between Jane Lopez's trial testimony and proof to the contrary found in phone records, indicating Bruno Santos was not at his mother's house. Trial Counsel was made aware of this discrepancy, yet, Trial Counsel failed to utilize the records on cross-examination. (See Dunn Affidavit) Trial Counsel, in addition to failing to cross-examine these Bruno Santos family members regarding the weakness and inconsistency of their testimony bolstering alibi, wholly failed to cross-examine police witnesses regarding their lack of investigation into the false statements.

vi. Trial Counsel had been provided information that Bruno Santos' affects and residential surroundings had not been fully and completely searched, in addition to information that an escape route from the scene to his place of residence was available, yet unsearched for residual evidence. Trial Counsel wholly failed to cross-examine Bruno Santos or police officers regarding this lack of complete search of the residence and surroundings, including trash dumpsters. Perhaps the most damning omission in Trial Counsel's cross-examination was his failure to raise the fact that .25 caliber ammunition was found in Bruno Santos residence and in the pink robe found in the trash can at the crime scene. (See attached Bates Stamped Pg. 972-973, Exhibit 13, & 2880-2882 , Exhibit 14 Supplemental Police Report)

b. Trial Counsel was, or should have been aware of Officer Stu Robinson's Grand Jury testimony asserted that no latent prints were found at the crime scene. Discoverable documents, made absolutely clear that this testimony was inaccurate and false testimony, in that the record reveals that thirty nine (39) latent prints were found at the scene including on the .264 rifle scope, on two (2) .264 live rounds and on a .264 ammunition insert from which several rounds were missing. Yet, Trial Counsel failed to raise this inconsistency in his cross examination of Officer Robinson. But for Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (See Affidavits of Mark Rader & Robert Kerchusky, Exhibit 15 attached hereto and made a part hereof)

c. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to present evidence of an audio recording, recorded inadvertently by Officer Ross Kirtley, the first police presence at the scene, which recording was known to Trial Counsel, and which clearly proved the theory that police focused on Petitioner Sarah Johnson, to the exclusion of all other possible suspects and theories, because she was the easiest target. (See Affidavit of Patrick Dunn)

d. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to cross-examine Bruno Santos family and associates. (See more detailed allegations in paragraph 17.a.i) Trial Counsel had abundant information that Bruno Santos was dealing drugs and had gang connections. Trial Counsel had abundant information regarding Bruno Santos, having committed the crime of statutory rape, thereby giving Santos a motive for killing to avoid a potential life sentence, yet he failed to cross-examine Santos. But for Trial Counsel's failure to cross-examine Bruno Santos at trial the jury would have been presented with the true picture of

Bruno Santos and it is reasonably likely Petitioner would not have been convicted of the crimes charged.

18. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to call as a witness, a neighbor of Petitioner who would have testified that she heard an argument outside the victims' residence prior to the homicides. The State presented evidence that the Petitioner told police officers that she had heard arguments outside of the home that she shared with the victims prior to the homicides. The State's witnesses implied that Petitioner was lying about the arguments she heard in order to blame someone else for the crime. Had Trial Counsel called the neighbor(s) to testify that she (they) also heard the arguments or disturbances, the Petitioner's statements would have been corroborated and the State's theory she was lying about the arguments in order to place the blame on somebody else would have been disputed. But for the Trial Counsel's ineffectiveness, there is a reasonable probability that Petitioner would not have been convicted. (See Affidavit of Mark Rader) More specifically, trial counsel utterly failed to elicit the following evidence, which evidence if elicited before the jury would have produced a reasonable probability Petitioner would not have been convicted.

a. Neighbor Terri Sanders, residence 1115 River View, was awoken at approximately 5:40 a.m. by dogs barking on the morning of the murders, supporting Petitioner's statements that something nefarious was afoot in the neighborhood. (See attached Bates Stamp numbered 271, Exhibit 16, & 273, Exhibit 17 of Supplemental Police Reports)

b. Neighbor Stephanie Hoffman was awoken in the middle of the night by a figure who had entered the bedroom in which she slept on the night of the murders. (See attached Bates Stamp numbered 209-210, Exhibit 18 Supplemental Police Reports.)

c. Neighbor Rick Olsen was woke up, while sleeping in a camper trailer in the driveway of his home, 1136 Riverview Drive, at 5:00 a.m. the morning of the murders. (See attached Bates Stamped 192, Exhibit 19 Supplemental Police Reports.)

d. Neighbor, Linda O'Conner's thirteen (13) year old son, whose room at 1042 Glen Aspen Drive, faces the road witnessed a white truck speed down the road in the middle of the night while he was up, not able to sleep and watching animal planet. (See Bates Stamp Pg. 5040, Exhibit 20 Supplemental Police Report attached)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN DEALING WITH FINGERPRINT EVIDENCE ISSUES

19. Trial Counsel rendered ineffective assistance of counsel, in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution, in the following general and specifically described failings, which if had not occurred there exists a reasonable probability Petitioner would not have been convicted.

- a. Failure to adequately investigate all available fingerprint evidence.
- b. Failure to file a motion to compel disclosure of all fingerprint evidence.
- c. Failure to object to the State's untimely disclosure of the fingerprint evidence.
- d. Failure to move for a continuance based on the State's untimely disclosure.
- i. Despite a discovery request, the State did not turn over all requested fingerprint evidence, with some only disclosed during trial and only a short period of time prior to Trial Counsel calling its expert witness on fingerprint evidence. Because of Trial Counsel's failure to adequately investigate and review the information disclosed, Trial Counsel did not realize that the State had not provided all of the requested evidence. When fingerprint evidence was finally disclosed, during trial, Trial Counsel failed to object and did not seek a continuance to provide adequate time for investigation and preparation. Because of Trial Counsel's failures, the defense expert was inadequately prepared to testify and Trial Counsel did not understand that their expert did not have the necessary evidence to prepare. (See Affidavits of Mark Rader, and Robert Kerchusky)
- ii. Due to Trial Counsel's failure to adequately investigate, counsel failed to ensure that usable fingerprints taken from the murder weapon, scope, ammunition

packaging and ammunition found at the scene were submitted to the appropriate fingerprint identification systems so that the person whose prints were found could be identified. During trial, the State's fingerprint expert testified that although usable prints taken from the scene did not match Petitioner's nor others connected with the case, only two of the usable fingerprints found were submitted to Idaho AFIS (*See* Testimony of Tina Walthall). The palm print found on the murder weapon, and other useable prints found on the ammunition at the scene were never submitted to Idaho AFIS (*See* Testimony of Tina Walthall). In addition, none of the usable fingerprints and palm print were ever submitted to the FBI's International Automated Fingerprint System (IAFIS). But for Trial Counsel's failures as articulated above, all usable prints would have been properly submitted to relevant identifying systems such that the person who actually handled the murder weapon and ammunition found at the scene, and who removed the scope from the murder weapon, would likely have been identified. (*See* Affidavit of Robert Kerchusky)

- iii. Subsequent to being retained by Petitioner's Trial Counsel, despite requests from Defense expert Kerchusky, the expert was not provided access to the entire police investigative file regarding fingerprints, nor given access to the crime scene, or physical evidence, in order to test same for latent fingerprints, nor were photographic depictions of same provided, so that the expert may have offered an opinion whether latent prints could or should have been found. (*See* Kerchusky Affidavit)
- iv. Trial counsel failed to elicit testimony from defense expert Kerchusky regarding potential discovery of additional latent fingerprint evidence on the trash can lid, of the trash can where the robe and gloves were found; the closet door in Speegle's apartment, from which the murder weapon and ammunition were taken for use; or other smooth surface areas in Speegle's apartment or the crime scene generally. (*See* Kerchusky Trial Testimony & Kerchusky Affidavit)
- v. Trial Counsel should have obtained a court order mandating Idaho State AFIS, WIN and FBI search of all unidentified latent prints for match, or alternatively made known to the jury that no effort was made to discover a match or matches to all of the latent prints found at the crime scene. But for this omission or failure of Trial Counsel a reasonable probability exists that Petitioner would have been found not guilty.
- vi. Trial Counsel was made aware by Kerchusky that the latent unidentified palm print lifted from stock of the .264 rifle was a fresh print, based upon statements and testimony that the gun had not been touched, other than by Speegle, in approximately one (1) year, yet trial counsel failed to elicit testimony from Kerchusky on this critical issue which would have cast suspicion away from defendant and toward an unknown shooter leading to a reasonable probability that Petitioner would have been found not guilty. (*See* Kerchusky Affidavit and trial Testimony)

vii. Trial Counsel had knowledge of Mel Speegle's testimony (and pre-trial statements to the same effect) that the .264 ammunition was purchased ten years prior to the shooting and had not been opened and gone through in that length of time. Kerchusky made Trial Counsel aware of his opinion that these facts proved the latent prints found on the inserts and ammunition were fresh. (See Kerchusky Affidavit) Trial counsel was made aware of the enormous importance of these facts yet, trial Counsel never brought out this testimony nor solicited expert Kerchusky's opinion on the subject at trial, which would have been that the latent fingerprints found on the insert and ammo were fresh prints. (See Kerchusky Trial Testimony) Furthermore, during Kerchusky's comparison of the latent to latent prints in this case, he was able to identify as a match one latent print from the scope to a latent from the insert from the box of .264 magnum ammo. That identification proves the latent print on the scope was fresh, yet trial counsel failed to elicit testimony from Kerchusky on this subject. Furthermore, these fresh latent fingerprints did not match Sarah Johnson, Matt Johnson, Mel Speegle, either victim, or other known inked fingerprints obtained during the investigation, thereby casting suspicion away from defendant and toward an unknown shooter, yet Trial Counsel failed to highlight or even address the issues. If Trial Counsel had not failed in these respects a reasonable probability exists that Petitioner would have been found not guilty.

viii. Kerchusky made Trial Counsel aware of his opinion that only a fresh latent print will be discovered on a door knob because prior latent prints are invariable lost due to smearing. Likewise, Kerchusky's opinion that five latent fingerprint found on four doorknobs at the crime scene were fresh prints, and further that the latent print left on the doorknob on the master bedroom was likely the last person to have turned the knob, was made clear to Trial Counsel. Despite being aware of his expert's opinion in these regards Trial Counsel failed to elicit testimony regarding door knob prints at any time during trial. But for Trial Counsel's failure in this regard a reasonable probability exists that Petitioner would have been found not guilty.

INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO LAY A PROPER FOUNDATION FOR PSYCHOLOGICAL OPINION EVIDENCE

20. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to lay the proper foundation to allow the admission into evidence, during the hearing on Defendant's Motion to Suppress Statements, of Dr. Craig Beaver, PhD regarding his opinion whether under all the circumstances Sarah Johnson knowingly

and voluntarily waived her right to counsel. But for Trial Counsel's failure to lay the necessary foundation Petitioner's statements to law enforcement made after she initially asserted her right to counsel would have been suppressed, not admitted into evidence, and Petitioner would not have been convicted. (See Transcript pgs. 519-521, 523, 525, & 534-535)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN DEALING WITH
AIDING AND ABETTING THEORY OF GUILT

21. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in:

- a. Failing to recognize that the State was pursuing a theory that Petitioner was guilty under an aiding and abetting theory.
- b. Failing to adequately research Idaho law regarding the possibility of the Court instructing the jury on a theory of guilt by aiding and abetting when the information charged Petitioner with actually shooting the victims.
- c. Pursuing a theory of defense which did not provide any defense or rebuttal to the aiding and abet theory.
- d. Trial Counsel presented a defense of "no blood, no guilt." In describing his theory of the case during the final jury instruction conference, Trial Counsel stated that it was his contention that Petitioner was not the shooter. (See Final Jury Instruction Conference held 3/11/05). However, prior to the trial the State had given its requested jury instructions including a request that the jury be instructed that Petitioner could be convicted on an aiding and abetting theory (See State's Requested Jury Instructions). Despite the State's requested jury instruction, during the final jury instruction conference, Trial Counsel argued to the District Court that the State's contention throughout the case had been that Petitioner was the shooter. Thus, even after the State had rested its case, and Trial Counsel had given his opening statement outlining the proposed defense, Trial Counsel still failed to recognize that the State was pursuing an aiding and abetting theory of guilt.
- e. In *State vs. Wheeler*, 109 Idaho 795, 711 P.2d 741 (Ct. App. 1986), the Idaho Court of Appeals found that a trial court could instruct a jury on a theory of aiding and abetting despite information which only charged the defendant with

being the actual shooter. Thus, published case law in existence for 19 years prior to Petitioner's trial clearly stated that a person charged as actually committing a murder could be convicted under an aiding and abetting theory. Nevertheless, Trial Counsel, failed to seek a pretrial ruling on the issue of whether the District Court would give an aiding and abetting instruction should the evidence support it. Despite notice of the fact that the State was seeking an aiding and abetting jury instruction, and published case law stating that the district court could so instruct, Trial Counsel chose to go forward with a defense that did not address the aiding and abetting theory without seeking a pretrial ruling on whether the District Court would give an aiding and abetting instruction should it find that the evidence supported such. Had Trial Counsel sought a pretrial ruling on the issue, counsel could have adequately prepared for such a jury instruction by either seeking a continuance to properly investigate the State's new theory, and by preparing and presenting a defense which actually addressed this new theory of the case. There is a reasonable probability that, had Trial Counsel properly prepared an adequate defense, Petitioner would not have been convicted.

But for Trial Counsel's rendering of ineffective assistance of counsel as above specified, there is a reasonable probability that the outcome of the proceeding would have been different.

22. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to object to jury instructions which counsel recognized were confusing and which would allow the Petitioner to improperly be found guilty of a sentencing enhancement. The jury was instructed that "the law makes no distinction between a person who directly participates in the acts constituting a crime and a person, who either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps or hires another to commit a crime with the intent to promote or assist in its commission. Both can be found guilty of the crime". In addition, the jury was asked whether "the defendant displayed, used, threatened or attempted to use a firearm in the commission of the crime". During a hearing held on March 15, 2005, Trial Counsel acknowledged that these two instructions

could be read to mean that Petitioner could be found to have used a firearm if the jury determined that she actually helped or solicited another person to use a firearm, or stated alternatively, she aided and abetted another rather than acted as the shooter. Nevertheless, Trial Counsel did not request a jury instruction which clarified that Petitioner could only be found guilty of the firearm enhancement if she personally used a firearm in the commission of a crime. But for Trial Counsel's rendering of ineffective assistance of counsel, there is a reasonable probability that the outcome of the proceeding would have been different.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN FAILURE TO UTILIZE
READILY AVAILABLE PSYCHIATRIC EVIDENCE

23. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to pursue and present a defense that included expert psychiatric testimony which would have informed the jury that a double patricide-matricide, is an incredibly rare phenomena, and rarer still with a girl of tender years, such as the Petitioner, who has not been physically and/or sexually abused, is not schizophrenic and/or intoxicated, thereby creating reasonable doubt, and a substantial likelihood of a verdict of not guilty. (See attached scientific journal articles and Dr. Richard Worst Affidavit, attached as Exhibits 21 & 22) Trial Counsel, or any criminal defense attorney meeting a minimum standard of effectiveness, would have known to inquire into the mental state of the defendant and consult a psychiatrist regarding all possible defenses including criminal intent. (See attached articles from popular periodicals addressing the statistical odds against guilt of Petitioner, attached as Exhibit 23) But for Trial Counsel rendering ineffective assistance of counsel, in failing to pursue expert psychiatric

evidence and testimony, there is a reasonable probability that the outcome of the trial proceeding would have been different. (*See* also Dunn Affidavit)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

24. Trial Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in that lead trial counsel Bob Pangburn consistently and abusively violated the Rules of Professional Conduct by communicating with the media in a self promotional manner, rather than diligently preparing himself to interrogate witnesses and otherwise prepare for trial. Trial counsel went so far as to counsel Petitioner, and arrange with ABC News, 20/20 an on air jailhouse interview for Petitioner that was only aborted by the efforts of Petitioner's investigator Patrick Dunn. (*See* affidavit of Dunn, and Nancy Grace CNNHLN TV Programs 2.21.05, 2.23.05, 3.15.05 Transcripts attached Exhibit 24)

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

25. Direct Appeal Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to raise on appeal an allegation of error by the trial court in denying the Motion to Suppress Statement Against Interest made subsequent to retainer of counsel, Doug Nelson, and Nelson's issuance of a "cease and desist" questioning letter to local law enforcement and the Office of Blaine County Prosecuting Attorney. (*See* letter attached, admitted into evidence, Exhibit 25) But for Appellate Counsel's failure to raise this allegation of error it is more likely than not the Supreme Court would have

reversed the District Court error and remanded the matter for new trial. (See Supreme Court Opinion State v. Johnson, 188 P.3d 912, attached as Exhibit 26)

26. Direct Appeal Counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Idaho Constitution in failing to argue insufficient evidence to support an aiding and abetting jury instruction. (See Supreme Court Opinion State v. Johnson, 188 P.3d 912, footnote No. 2) But for Appellate Counsel's failure to raise this allegation of error it is more likely than not the Supreme Court would have reversed the District Court error and remand the matter for new trial.

NEWLY DISCOVERED EVIDENCE

27. Subsequent to the trial hereof it was discovered that at least seven (7) latent prints lifted from evidence found at the crime scene, not just the three (3) fingerprints run through Idaho State AFIS by police investigation, met the criteria to be searched for match on Idaho State AFIS, WIN and FBI fingerprint data base, which fact could have been known had trial counsel provided all discoverable material to Kerchusky prior to trial. Trial counsel should have known of this fact, should have elicited expert opinion and testimony of this fact, but did not. If this evidence had been known and presented to the jury a reasonable probability exists that Petitioner would not have been convicted of the charges. (See Kerchusky Affidavit)

28. Subsequent to trial it was discovered that Maria Eguren, the State's AFIS technician and witness, was provided only three (3) photo-copies, not the actual latent lift cards of all unidentified latent prints found at the scene and on the evidence, with which to conduct an AFIS search for match. The most effective means to identify a match is

with a high quality latent lift card, not a photo-copy. It was also discovered that just prior to Eguren's trial testimony, when it was too late to conduct a latent fingerprint search for match, that she was finally provided all of the latent lift cards that had been lifted from items of evidence but not matched to known inked fingerprints. (See Kerchusky Affidavit, Bates Stamped Nos. 4550, Exhibit 27, 5988 Exhibit 5988, Exhibit 28)

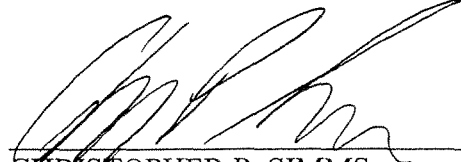
a. Based on the above newly discovered evidence it becomes clear that Tina Whalhall's trial testimony asserting that Ms. Eguren was provided all latent print lift cards, was false. If this truth had been known to the jury it is reasonably likely that Petitioner would have not have been convicted.

29. On or about January 19, 2009 the Idaho State Police Bureau of Criminal Identification, through an Automated Fingerprint Identification System (AFIS) search for match, identified a match for previously unidentified latent prints found on a rifle scope, and an insert from a box of .264 caliber ammunition, both found at the scene of the crime. The above referenced AFIS match was confirmed by latent print technicians. The person whose prints match the latent prints found at the scene is Christopher Kevin Hill, DOB 12-06-56. The Blaine County Sherriff's office was informed of the newly discovered evidence and performed follow-up investigation. Police reports were generated, and exist in written form, as to each of the factual points referenced in each preceding paragraphs. Photographs and latent lift cards exist for all latent prints found at the crime scene, and inked fingerprints of Christopher Kevin Hill, (or high quality copies thereof) exist and are part of the above referenced police reports, or referenced in the above referenced police reports. (See Kerchusky Affidavit Exhibit 29) Petitioner filed a Motion for Order of Discovery relating to the above, which order was granted on March 3, 2009. (See Attached Order of Discovery Relating the Newly Discovered Evidence, Exhibit 30) To date Petitioner has been provided Criminalist Analysis Report and two supplemental

police reports containing interview summaries of Mel Speegle and Christopher Kevin Hill, which contain inconsistent and conflicting statements, (*See Attached Supplemental Reports Bates Stamped 22-PC thru 28-PC, Exhibit 31, Bates Stamped 03-PC thru 20-PC, Exhibit 32*) Speegle's statements contained therein are inconsistent with his trial testimony and pre-trial statements. Speegle appears to now recollect with some certainty the Christopher Kevin Hill handled the .264 rifle when assisting Speegle move into the guest apartment at the Johnson home. Hill on the other hand appears to recollect with similar certainty that he used the .264 at a rifle range. Further investigation of the involvement of Mel Speegle and Christopher Kevin Hill is warranted. If this newly discovered evidence had been known and presented to the jury a reasonable probability exists that Petitioner would not have been convicted of the charges.

WHEREFORE, for any or all of the foregoing reasons, Petitioner prays this honorable Court enter its order setting aside, reversing and vacating the verdict, judgment and sentence of this Court in State v. Johnson Case No. CR-2003-1820 and remanding the case for new trial or alternatively, vacating the order, decision and opinion of the Supreme Court of Idaho in State v. Johnson No. 33312 affirming the judgment of this Court and permitting resubmission of the direct appeal on allegations of error in denying Motion to Suppress Defendant's Statements to Law Enforcement Personnel and in allowing the aiding and abetting instruction despite a lack of sufficiency of evidence to support such and instruction; or alternatively for such other and further legal and/or equitable relief as the Court deems just and proper under the circumstances.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW


CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.15.09
DATED


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of March, 2009, a true and correct copy of the foregoing FIRST AMENDED PETITION FOR POST-CONVICTION RELIEF was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello; Facsimile number 208.854.8074; PO Box 83720, Boise, Idaho 83720-0010; and The Office of the Blaine County Prosecuting Attorney; Facsimile number 208.788.5554; 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

☒ US Mail

☐ Hand Deliver

☐ Via facsimile 208.854.8074 & 208.788.5554


CHRISTOPHER P. SIMMS
Attorney at Law

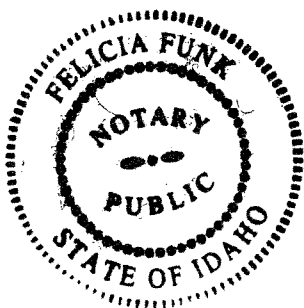
VERIFICATION

STATE OF IDAHO)
 : ss
COUNTY OF BANNOCK)

SARAH M. JOHNSON, being first duly sworn upon oath, deposes and states that I am the Petitioner in the above-captioned action and have read the within and foregoing document, know the contents thereof, and that the matters and allegations therein set forth are true.


SARAH M. JOHNSON

SUBSCRIBED AND SWORN to before me this 12 day of March,
2009.




NOTARY PUBLIC FOR IDAHO

Residing at: Pocatello / Bannock Co.

My Commission Expires: Nov. 2013



AFFIDAVIT OF MARK RADER,
CO-COUNSEL FOR BOB PANGBURN

RECEIVED
MAR 07 2006
STATE APPELLATE
PUBLIC DEFENDER

I, Mark Rader, after first being duly sworn, upon information and belief, depose and say:

In early 2004 Bob Pangburn was appointed to represent Sarah Johnson who had been charged with two counts of Murder in Blaine County, Idaho. I was appointed to act as co-counsel to Bob Pangburn a few months later; and

As co-counsel I worked on and was present for almost all stages of this case including filing and arguing of pre-trial motions, trial preparation, trial and sentencing; and

I am making this Affidavit in support of Ms. Johnson's Petition for Post-Conviction Relief; and

9(a) FAILURE TO FILE A TIMELY NOTICE OF APPEAL

After Ms. Johnson had been found guilty of two counts of murder she specifically asked Mr. Pangburn and myself to file an appeal on her behalf including the required notice for such an appeal. Neither Mr. Pangburn nor myself filed a Notice of Appeal on behalf of Ms. Johnson within the 42 days as required by Statute; and

As a result of my conversations with Ms. Johnson before and after her conviction and sentencing I know that she would have acted on her own to file an appeal if she knew that we would not follow her specific request; and

But for the assurances of Mr. Pangburn and myself Ms. Johnson would have filed a notice of appeal in a timely manner; and

9(b) FAILURE TO REQUEST MORE TIME TO PREPARE FOR TRIAL

During trial the State argued that a comforter and a sheet were over the head of the female victim when she was killed by a contact gunshot made with a high-powered rifle and that comforter and sheet prevented blood spatter from being sprayed on Ms. Johnson. On numerous occasions prior to trial Mr. Pangburn and myself requested that the State turn over all the physical evidence for review by our expert witnesses. The State did not completely release all of the evidence for our review and testing until approximately one month before trial; and

Mr. Pangburn and I failed to move for a continuance which prevented us from adequately consulting with our experts and properly preparing experiments and exhibits that would have been admissible in District Court for the purpose of challenging the State's theory regarding a comforter found over Mrs. Diane Johnson; and

Because of the short period of time between final release of the evidence and the start of trial we were unable to adequately answer the State's claim that there was a comforter over the head of Ms. Johnson's mother; and

The discovery delay prevented Mr. Pangburn and I fully preparing our expert witnesses to testify about the objective scientific characteristics that one would find on a comforter over the head of a the victim that was damaged by a contact gunshot from a high-powered rifle. We were also hindered in our ability to effectively cross-examine the State's witnesses because of we weren't adequately prepared on this issue; and

A delay in the start of trial would have enabled us to prepare fully regarding the scientific evidence for and against the State's theory and therefore enhance Ms. Johnson's defense; and

9(c) FAILURE TO ADEQUATELY CROSS-EXAMINE

THE STATE'S WITNESSES

Mr. Pangburn and I failed to adequately cross-examine the following State's witnesses:

Alan & Julia Dupis

Schell Eliison - Paramedic

Sheriff Femling

Bruno Santos

Dect. Steve Harkin

9 (d) FAILED TO PROPERLY PRESENT DEFENSE

FINGERPRINT EVIDENCE

The State failed to disclose useable fingerprint evidence in a timely manner. Some of that evidence was made available to the defense while trial was in progress. Mr. Pangburn and I did not move for a continuance based on the late disclosure because we did not understand that our fingerprint expert did not have the necessary State's evidence to fully prepare to testify; and

In addition to his finding that fingerprints found on the murder weapon, the shells and the shell box didn't match the Defendant our fingerprint expert also testified that the State's efforts to search fingerprint records was horribly inadequate; and

The delay in disclosure prevented the defense expert from finding a match to the unknown fingerprints found at the scene. If those fingerprints were properly run through the right database it is likely that he would have found a match; and

When testifying about the quality of the State's searches for matching prints the defense's fingerprint expert was often limited to

testifying about what should have been done with the fingerprints instead the results of a proper search of fingerprint records. This effectively render his testimony irrelevant; and

9(e) AIDING AND ABETTING INSTRUCTIONS

Late in trial the Court granted the State's request for jury instructions on Aiding and Abetting. The indictment alleged and State put on evidence that the Defendant personally shot her parents. The State never put on any evidence that the Defendant committed the Murders by Aiding and Abetting any other person. It is my belief that Mr. Pangburn and I should have anticipated this change in strategy by the State and should have been prepared to defend against the State's arguments requesting such an instruction; and

When this instruction was allowed it became apparent that Mr. Pangburn and I had to change the defense strategy in mid-trial. To do that effectively Mr. Pangburn and I needed additional time to organize and prepare to defend against the State's new theory. We should by been better prepared to attack the State's circumstantial evidence. However, we didn't request a continuance to make the necessary changes in our strategy. Instead we pressed forward with our defense and made attempted to make changes along the way. That was wholly inadequate

and the State's theory of Aiding and Abetting was left almost totally unchallenged; and

9(f) FAILED TO CALL NEIGHBOR AS A

DEFENSE WITNESS

Prior to her arrest the Defendant made statements to the police about what happened. In those statements she stated that about four (4) hours before the shootings she was awakened by arguing coming from her back yard. She went on to say that her father told her to go to bed because it was nothing and that he would take care of matters; and

The State put on several witnesses who didn't hear any arguments and thereby leaving the impression that the Defendant was lying to the police and attempting to blame somebody else. In fact the State made that argument to the jury during closing; and

Mr. Pangburn and I failed to call as a witness a neighbor of the Defendant who would have testified that she heard arguments coming from the home or yard of home where the crime was committed. This testimony would have supported the Defendant's statement to the police regarding the shootings in her home; and

If we had called this neighbor to testify then we could have challenged the State's arguments that the Defendant was lying and covering up her involvement in the crime; and

9(g) TRIAL JUDGE PERSONALLY INVESTIGATES THE FACTS

Shortly after being assigned as the trial judge in this case the Hon. Barry Wood reviewed the transcripts of the Grand Jury proceeding, police reports and conducted an independent investigation into the facts surrounding the deaths of Mr. & Mrs. Alan Johnson. As part of his investigation it is my understanding that he even went to the scene of the crime. I don't know if he entered the house where the shooting occurred; and

After hearing about this I became concerned that Judge Wood could no longer act as a neutral judge in this case. I raised this issue with Mr. Pangburn but Mr. Pangburn felt there were no other acceptable Judges for this case; and

Later during pretrial proceeding and at trial it became evident that Judge Wood had determined that the Defendant was guilty of the crimes charged. His inability to be fair and impartial really became clear when he heard arguments regarding the State's request for a jury instruction on Aiding and Abetting. Judge Wood used incorrect evidence and information that was not placed in evidence during trial and then made guesses about the Defendant's involvement in the shooting of her parents. In fact during arguments about the State's request for the Aiding and Abetting instruction Judge Wood actually stated that if Ms. Johnson didn't shoot her

parents then nobody else could have done it without her help. This was pure conjecture and guesswork on the part of Judge Wood; and

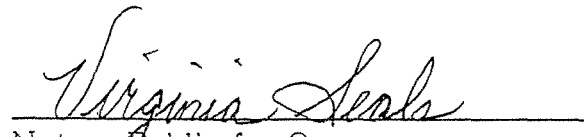
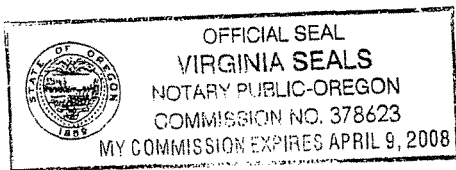
For these reasons I believe that the Defendant should reinstate her right to appeal the judgment finding her guilty of two counts of Murder and overturning her conviction and returning the case to Blaine County for retrial.

DATED this 6th of March, 2006.



Mark Rader
Attorney for Defendant

SIGNED AND SWORN before me on the 6th day of March, 2006.



Notary Public for Oregon
My Commission Expires: 4-9-2008

Christopher P. Simms
Attorney at Law ISB #7473
P.O. Box 3123
Ketchum, Idaho 83340
PH 208 622 7878
FAX 208 622 7921



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
)	
Petitioner,	)	Case No: CV-006-324
)	
vs.	)	AFFIDAVIT OF
	)	PATRICK DUNN
STATE OF IDAHO,	)	IN SUPPORT OF POST-
	)	CONVICTION RELIEF
Respondent,)	

I, PATRICK DUNN, after being first duly sworn, upon information and belief, depose and say:

1. I am a Legal Investigator and work professionally for criminal defense lawyers performing duties in compliance with the US Department of Labor definition of my profession, including but not limited to; locating and interviewing witness, police and experts; gathering and reviewing evidence; taking photographs, assembling evidence and reports for trial; attending and assisting attorneys at trial and testifying in court. I am experienced in surveillance, investigation, and data collection, including obtaining information which can be admitted into evidence during criminal trials.
2. I was retained by Petitioner's Trial Counsel as a Legal Investigator and testified as a witness during the criminal proceedings against Sarah Marie Johnson under cause number CR-2003-00182.

3. As a result of performing my duties before, during and after the trial of the underlying criminal prosecution I have unique knowledge of facts and circumstances pertaining to the case.

5. I have been asked to provide information and expertise to Christopher P. Simms, Attorney at Law, who represents Petitioner, Sarah M. Johnson, relating to a Petition for Post-Conviction Relief under the above-styled cause number. In addition to the facts sworn to here, which are founded wholly on my current information and belief, I have retained notes and files from my initial engagement in the underlying case. If appointed by the Court I will allot the appropriate time to fully review those notes and documents and supplement these factual averments with documentary proof.

6. I made Trial Counsel aware of the consumer periodicals, and some of the professional journal publications, indicating that parricide by a juvenile girl is very rare, even in the event she had been abused, and strongly suggested that Trial Counsel pursue this line of investigation and defense. Trial Counsel failed to read, investigate or pursue this issue in any way.

7. During the investigation hereof I discovered evidence that Matt Johnson made false statements to police, and provided false testimony during the trial of Sarah Johnson. I provided this information to Bob Pangburn, the lead trial attorney and he failed to act in any affirmative manner to utilize the information which would have directed suspicion toward Matt Johnson and away from Sarah Johnson. More specifically, Matt Johnson stated that his girlfriend Julie Weseman woke him up with a call at 6:15 A.M. to inform him about the murders. Cell phone records show that Matt called Julie's home phone at 6:09 AM and again at 6:10 AM. The 6:10 AM call lasted 2 minutes. Matt provided this

to police as the call from Julie when it was Matt calling Julie. Matt then received a call from Julie Weseman at 6:13 AM from Julie's cell phone. This indicated that Matt's statement of being awakened by Julie is inconsistent with the phone records. Matt's statement is that he waited for Julie Weseman and the Laititi sisters to drive down from Coeur d'Alene to drive him to Bellevue. His statement is that they left Moscow about 8:00 a.m. His girlfriend states that they left Moscow approximately 1:00 PM. Seila Latititi, Julie's friend who drove to Bellevue with Matt, stated that they left in early afternoon. Her Sister Selina, who also drove to Bellevue with them, stated that they left approximately 1:00 PM. Statements also indicate that Matt Johnson was in the Riggins area Saturday and Sunday before the murders. Even with this information, and supporting documentation Mr. Pangburn failed to cross exam Matt Johnson relating to these false statements made to police on the day his parents were murdered.

8. During the course of the trial I became aware of suspicious conduct between assistant prosecuting attorney Justin Whatcott and Katie Jensen, who became the jury foreman. As an investigator I pay particular attention to the jury when they enter the courtroom. I do this because repeated, direct and prolonged eye contact with anyone in the courtroom usually indicates recognition and could indicate the possibility of access to information about court discussions outside of the jury. Midway through the trial I observed repeated, prolonged, direct eye contact between Deputy Prosecutor Justin Watcott and Jury Foreman Katie Jensen. This eye contact continued through the rest of the trial. I made Attorney Pangburn aware of this however he failed to raise the issue. Whatcott stated during the trial that he had run into Jensen at a bar and had avoided contact with her. When I raised this issue post trial Whatcott denied it. There is a

witness who saw Whatcott and Jensen together at an outdoor restaurant. I also have a lead on an individual who knows Jensen well and has stated that Whatcott moved in with Jensen. I do not have the dates.

9. Judge Wood stated in the court room that shortly after he assumed the case that he had his clerk drive up from Shoshone while he read the Grand Jury transcript. It is my recollection that Judge Wood visited and toured the crime scene in early June of that year, but I cannot recall the basis of or source of this recollection without further investigation. Trial Counsel Pangburn was apprised of these facts and I suggested he file a Motion to Disqualify Judge Wood, but Trial Counsel failed to do so.

10. Trial counsel Pangburn failed to introduce audio recordings, one from first law enforcement officer on scene, and a second recorded at a later time, both showing the police focused on Sarah from the beginning to the exclusion of other possible suspects. ISP officer Kirtley was the first officer on scene. He had stopped a truck on the highway just above Glenn Aspen. When he responded to the crime he did not turn off his video camera in his patrol car. The camera is tied to transmitter on his person. He recorded any conversation he was close to for approximately 2 hours. This recording recorded officers stating that Sarah Johnson could not have committed the murders because she had no blood on her. It also recorded Sheriff Walt Femling stating they needed to solve this and that Sarah did it and they needed to concentrate on her. This was before the crime scene had been completely processed. I had a copy of this tape enhanced so it could be presented to the jury. Mr. Pangburn failed to present the enhanced tape and this very persuasive evidence went unutilized. The second recording was of Scott Birch an investigator from the AG's office interviewing Sarah. The video recording of the


interview was left on after the interview was concluded. I had it enhanced and could hear police officers yelling at Sarah trying to get her to confess. This was after she had clearly stated that she did not want to talk. Again, Mr. Pangburn failed to attempt to utilize the evidence.

11. Trial counsel Pangburn was not prepared to interrogate witnesses. I prepared witness notebooks, which Pangburn obviously had not read. This was an ongoing problem. Pangburn would always arrive either late or just before court. He would want the trial books I had prepared for the witnesses which were to be on the stand that day. This was for both prosecution and defense witnesses. There were times when he was even late for court. This conduct is reflected in the questioning of witnesses and that he didn't even cross-examine some witnesses. Indicative of Mr. Pangburn's refusal to fully prepare for trial was the fact that during the trial he took a trip to California and visited a psychic, rather than studiously review materials that would assist him in preparing to defend his client.

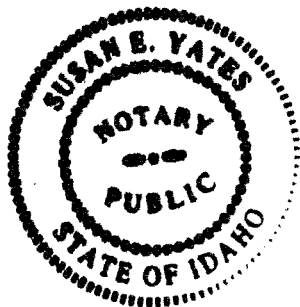
12. Trial Counsel Pangburn failed to provide the defense team with Discoverable materials he had received from the State in a timely fashion, negatively impacting the individual abilities of the defense team in their investigation and eventual trial testimony. More specifically, prior to the trial Pangburn would receive discovery and carry it around in his car. There are records showing request for specific discovery, which I had Anita Moore, an attorney who worked for Pangburn, prepare. There are answers from the prosecutor which indicate the discovery had already been provided. This was a tremendous problem in trying to investigate and develop the defense.


13. Having attended the trial I was shocked to observe Trial Counsel fail to cross examine, or utterly fail to effectively cross-examine, seven (7) witnesses. In particular, Bruno Santos, his associates and family members were essentially not cross examined. These witnesses included Bruno Santos, Consuelo Cedeno, Glenda Osuna, Luis Ramirez (aka Juan Gonzales), Jane Lopez, Becky Lopez and Carlos Ayala. It was well understood by the defense team that we were trying to establish that someone performed the murders to protect Bruno from prosecution for statutory rape, and from interference with his drug dealing. In particular, when Bruno's mother was on the stand she directly contradicted her previous statement. I had made Trial Counsel aware that the alibi story provided by Bruno Santos and family was not accurate based on phone records reviews, review of the layout of the Santos home, yet Trial Counsel simply failed to inquire. More specifically, I had provided information to Mr. Pangburn, based on prior statements of Mr. Cedeno, wherein she insisted her son Bruno Santos had not driven the car the morning of the murders because there was dew on the windshield. Ms. Cedeno testified at trial that she didn't pay attention to such things. (See Transcript pg 2776) Yet, Trial Counsel failed to cross-examine Ms. Cedeno. Furthermore a discrepancy existed, between Jane Lopez's trial testimony and proof to the contrary found in phone records, indicating Bruno Santos was not at his mother's house. I made Trial Counsel aware of this discrepancy, yet, Trial Counsel failed to utilize the records on cross exam.

DATED this 10 day of March, 2009.


PATRICK DUNN
LEGAL INVESTIGATOR

SIGNED AND SWORN before me on the 10 day of March 2009.




Notary Public
My Commission Expires: 1/28/2015

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Last Name pangburn

Attorney Roster Search Results as of 3/4/09

Name: Bobby Eugene Pangburn

Address: , ,

Firm:

Phone: **Ext:**

Fax:

E-Mail Address:

Website Address:

ISB Membership Number: 3892

Admittance Date: 9/22/1988

Current Status: Suspended

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In the Supreme Court of the State of Idaho

COPY

IN THE MATTER OF BOBBY E.
PANGBURN, ATTORNEY AT LAW.

IDAHO STATE BAR,

Plaintiff-Respondent,

v.

BOBBY E. PANGBURN,

Defendant-Appellant.

DISCIPLINARY ORDER

Supreme Court Docket No. 34173
ISB FC No. 05-07

Ref. No. 07-287

A CERTIFICATE OF RECORD with attachments of proceedings before the Professional Conduct Board of the Idaho State Bar was filed by Respondent May 11, 2007 which contains FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION. A NOTICE OF OBJECTION was filed by Appellant Pangburn June 1, 2007. APPELLANT'S BRIEF was filed by Appellant October 4, 2007. RESPONDENT'S BRIEF was filed by Respondent October 25, 2007. APPELLANT'S REPLY BRIEF was filed by Appellant Pangburn December 7, 2007.

The CONCLUSIONS OF LAW found that Appellant Pangburn has violated Idaho Rules of Professional Conduct 8.1 in conjunction with his admission that he violated Oregon DR-1-103(C), failure to cooperate and failure to respond to disciplinary authorities as set forth in the Sixth Cause of Action in the Third Formal Amended Complaint.

With respect to Appellant Pangburn's representation of T.W., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn violated I.R.P.C. 1.2, 1.3, 1.4, 1.5(f), 1.16(d), and 8.4(c).

With respect to Appellant Pangburn's representation of R.K., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn violated I.R.P.C. 1.2, 1.3, 1.4, and 1.16(d).

With respect to Appellant Pangburn's representation of W.E., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn violated I.R.P.C. 1.2, 1.3, 1.4, and 1.16(d).

With respect to Appellant Pangburn's representation of M.B., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn violated I.R.P.C. 1.2, 1.3, 1.4, 1.16(d), 8.4(c), and 8.4(d).

With respect to Appellant Pangburn's representation of M.S., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn has violated I.R.P.C. 1.2, 1.3, and 1.4.

With respect to Appellant Pangburn's representation of C.B., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn has violated I.R.P.C. 1.2 and 1.4.

With respect to Appellant Pangburn's representation of T.S., the Committee concludes that Respondent has proven by clear and convincing evidence that Appellant Pangburn has violated I.R.P.C. 1.2, 1.3, 1.4, and 1.16(d).

Further, the Committee also considered the ABA Standard for Imposing Lawyer Sanctions, (hereinafter, "ABA Standards") to determine the appropriate sanction to recommend in this case. ABA Standard 3.0 addresses the factors to be considered and the Committee has considered the duties violated, if any, Defendant's mental state, the actual or potential injury caused by Defendant's misconduct, if any, and the existence of aggravating or mitigation factors. (Id. 01.815).

The recommended disciplinary action includes suspension from the practice of law in the State of Idaho for a period of five (5) years, with three (3) years being withheld. Further, Appellant Pangburn shall be placed on probation for a period of three (3) years following his reinstatement, if any, upon the terms and conditions imposed.

After review of the BRIEFS and the CERTIFICATE OF RECORD, this Court upholds the Recommendation of the Committee; therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant, BOBBY E. PANGBURN, be suspended from the practice of law in the State of Idaho for a period of five (5) years, with three (3) years being withheld.

IT FURTHER IS ORDERED that Appellant, BOBBY E. PANGBURN, be placed on probation for a period of three (3) years following his reinstatement, if any, upon the following terms and conditions:

DISCIPLINARY ORDER – ISB v. Pangburn, Supreme Court Docket No. 34173


1. Probation should be imposed pursuant to Idaho Bar Commission 506(c). Probation under Rule 506(c) is appropriate since there is little likelihood that Defendant will harm the public during the period of probation and the conditions of probation can be adequately supervised by Bar Counsel's Office. Further, conditions of probation should include: (1) If Defendant admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct between the date of Defendant's actual suspension through the three year period of probation, regardless whether that admission or determination occurs after the expiration of the suspension and probation, then the withheld suspension should be immediately imposed and served by Defendant, in addition to any other sanction that is imposed for any such admission or determination of misconduct during that time. (Thus, by way of example, if Defendant admits or is found to have violated any of the Idaho Rules of Professional Conduct in any formal charge case relating to his conduct during the period of his actual suspension and probation, then the withheld portion of his suspension shall be automatically and immediately imposed upon Defendant regardless whether that admission or determination is after the expiration of his probation); (2) That Defendant conduct his practice and representation of his clients in a manner so as to avoid any grievances or complaints being submitted to Bar Counsel's Office. However, recognizing that such grievances and/or complaints are beyond the control of the attorney, Defendant must fully cooperate with Bar Counsel's Office in the investigation of any such complaints or grievances; (3) Defendant be required to maintain errors and omissions legal malpractice insurance during the probation period, providing at least \$100,000/\$300,000 coverage in a form that the reinstatement Hearing Committee determines is appropriate as a condition of Defendant's reinstatement; (4) Defendant should make arrangements satisfactory to the Idaho State Bar for a supervising attorney to supervise Defendant's law practice during the probationary period. In addition, Defendant should be required to comply with the following terms and conditions relating to such supervision during the period of probation:

- a.) The supervising attorney shall be approved by the Idaho State Bar and shall indicate to the Idaho State Bar his or her willingness to supervise Defendant during the term of his probation, consistent with the terms and conditions set forth above and that follow. The Hearing Committee recommends that the supervising attorney should not be expected to assume any personal responsibility for the handling of Defendant's cases nor serve as a co-counsel in the sense of counter signing pleadings;
- b.) Defendant shall meet on a regular basis, but no less than monthly, with the supervising attorney regarding Defendant's representation of clients to ensure that Defendant is acting with reasonable diligence and promptness in representing his clients and that Defendant is keeping his clients reasonably informed about that status of their matters and promptly complying with any reasonable requests for information about Defendant's representation of his clients;

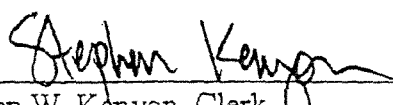
- c.) The supervising attorney shall report to the Idaho State Bar, on a quarterly basis, that Defendant is complying with the previous condition and Defendant is arranging to meet with the supervising attorney on a regular, but not less than monthly, basis and that Defendant has demonstrated to the supervising attorney reasonable assurance that Defendant is complying with the conditions of probation; and
- d.) Defendant shall certify in writing to the Idaho State Bar, under oath on a monthly basis, that he is acting with reasonable diligence and promptness in representing his clients, is keeping his clients reasonably informed about the status of their matters and promptly complying with any reasonable requests for information about Defendant's representation of his clients, and that his representation of his clients is consistent with his responsibilities under the Idaho Rules of Professional Conduct.
2. To be reinstated, Defendant must show that he has fully complied with the requirements of Idaho Bar Commission Rules 506(j) and 517(a)-(d).
3. As a condition for reinstatement under I.B.C.R. 518, Defendant shall be required to fully comply with I.B.C.R. 517 and shall be required to take and pass the Multistate Professional Responsibility Examination.
4. The Hearing Committee recommends that as a condition of reinstatement, Defendant shall reimburse Plaintiff for the costs associated with this proceeding, including, without limitation, the costs of the hearing and the hearing transcript, certified mailings and all other expenses related to this disciplinary proceeding.

Dated this 17 day of January 2008.

By Order of the Supreme Court


Daniel T. Eismann, Chief Justice

ATTEST:


Stephen W. Kenyon, Clerk

cc: Bobby E. Pangburn, pro se
Counsel of Record

I, Matthew Johnson ⁹⁻²³⁻⁰³ Matt Johnson was woke up Tuesday September, 2 2003 in Moscow, ID at 6:15am Pacific Time to my girlfriend (Julie Weseman) informing me with a cell phone call about my parents. I waited for my girlfriend and her two friends (Seila & Selina Laititi) from Hayden Lake, ID to come down and pick me up and drive me to my house in Bellevue. My roommate Tyler Hyndman _____ was present when I received the call from Julie. I have phone records to show when Julie's call was made to me. I also have phone records to show I received two phone calls while in Moscow from both my parents and my sister on Monday night September, 1 2003.

Matt Johnson



Matt Johnson 9-24-03

Contact numbers:

Tyler Hyndman	208-250-9836	<u>Tyler Hyndman</u>
Julie Weseman	208-651-1110	
Seila & Selina Laititi	208-772-9393	
Matt Johnson	208-651-1120	

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> Home > My Account > My Minutes

My Minutes

MATTHEW JOHNSON #173698789

208-651-1120

Minutes used this month:

Voice ▾

This is a summary of the minutes used since your last billing statement. Due to delays in processing network call records, this summary may not reflect airtime used, or plan or feature changes made, within the last two to five days, and does not include recent roaming minutes.

Call Detail Log

Type	Date	Time	City Called	St Number	Period	Duration
H	09/01	10:57PM	INCOMING	CL 208-651-1120	NW	1.0
H	09/01	10:56PM	NAMPA	ID 208-989-9113	NW	1.0
H	09/01	8:56PM	NAMPA	ID 208-250-9836	DT	3.0
H	09/01	7:22PM	NAMPA	ID 208-989-9113	DT	1.0
H	09/01	7:16PM	HAYDENLAKE	ID 208-772-7785	DT	4.0
H	09/01	7:11PM	HAYDENLAKE	ID 208-772-7785	DT	5.0
H	09/01	7:10PM	Voice Mail Retrieval	CL 208-651-1234	DT	1.0
H	09/01	7:00PM	INCOMING	CL 208-651-1120	DT	11.0
H	09/01	6:58PM	MOSCOW	ID 208-310-1840	DT	1.0
H	09/01	6:27PM	NAMPA	ID 208-989-9113	DT	1.0
H	09/01	6:18PM	COEURDALEN	ID 208-651-1110	DT	2.0
H	09/01	6:03PM	KETCHUM	ID 208-788-9754	DT	16.0
H	09/01	5:45PM	INCOMING	CL 208-651-1120	DT	1.0
H	09/01	4:48PM	COEURDALEN	ID 208-651-1110	DT	2.0
H	09/01	4:44PM	COEURDALEN	ID 208-651-1110	DT	1.0
H	09/01	4:40PM	NAMPA	ID 208-250-9836	DT	2.0
H	09/01	4:23PM	Voice Mail Retrieval	CL 208-651-1234	DT	1.0
H	09/01	2:26PM	MOSCOW	ID 208-885-6287	DT	2.0
H	09/01	2:22PM	NAMPA	ID 208-989-9113	DT	1.0
H	09/01	9:31AM	COEURDALEN	ID 208-651-1110	DT	1.0
H	09/01	9:18AM	HAYDENLAKE	ID 208-772-9393	DT	2.0
H	09/01	9:17AM	Voice Mail Retrieval	CL 208-651-1234	DT	1.0
H	08/30	2:25PM	INCOMING	CL 208-651-1120	NW	1.0
H	08/30	1:54PM	MOSCOW	ID 208-885-6287	NW	3.0
H	08/30	1:39PM	INCOMING	CL 208-651-1120	NW	1.0
H	08/30	1:02PM	INCOMING	CL 208-651-1120	NW	1.0
H	08/30	12:38PM	NAMPA	ID 208-989-9113	NW	1.0
H	08/30	12:34PM	NAMPA	ID 208-989-9113	NW	4.0
H	08/30	12:33PM	INCOMING	CL 208-651-1120	NW	1.0
H	08/30	11:46AM	INCOMING	CL 208-651-1120	NW	2.0

- call to my parents
the night before

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My Minutes - Cingular Wireless

H	08/30 11:35AM INCOMING	CL 208-651-1120 NW	1.0
H	08/30 11:33AM COEURDALEN	ID 208-651-1110 NW	1.0
H	08/30 11:23AM COEURDALEN	ID 208-651-1110 NW	5.0
H	08/30 10:49AM HAYDENLAKE	ID 208-772-9703 NW	3.0
H	08/30 10:43AM HAYDENLAKE	ID 208-772-9703 NW	6.0
H	08/30 10:42AM COEURDALEN	ID 208-651-1110 NW	1.0
H	08/30 9:30AM COEURDALEN	ID 208-651-1110 NW	1.0
H	08/30 9:26AM COEURDALEN	ID 208-651-1110 NW	1.0
H	08/30 9:26AM HAYDENLAKE	ID 208-772-9703 NW	1.0
H	08/29 8:54PM NAMPA	ID 208-989-9113 DT	2.0
H	08/29 8:13PM INCOMING	CL 208-651-1120 DT	1.0
H	08/29 7:10PM COEURDALEN	ID 208-651-1110 DT	6.0
H	08/29 3:41PM INCOMING	CL 208-651-1120 DT	1.0
H	08/29 2:43PM MOSCOW	ID 208-885-6287 DT	1.0
H	08/29 2:42PM Voice Mail Retrieval	CL 208-651-1234 DT	1.0
H	08/29 2:40PM INCOMING	CL 208-651-1120 DT	2.0
H	08/29 2:21PM NAMPA	ID 208-989-9113 DT	1.0
H	08/29 12:23PM INCOMING	CL 208-651-1120 DT	1.0
H	08/29 8:08AM Incoming	Roaming DT	1.0
H	08/29 7:56AM Incoming	Roaming DT	1.0
Total this Page:			113.0
Total all Calls:			1056.0
footer			
[...] [Displaying 301 - 350] [...] [...] [...]			

DT=Daytime NW=Night/Weekend/off Peak H=Home

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> > > My Minutes

My Minutes

MATTHEW JOHNSON #173698789

208-651-1120

Minutes used this month:

Voice

This is a summary of the minutes used since your last billing statement. Due to delays in processing network call records, this summary may not reflect airtime used, or plan or feature changes made, within the last two to five days, and does not include recent roaming minutes.

Call Detail Log

Type	Date	Time	City Called	St	Number	Period	Duration
H	09/08	8:46AM	COEURDALEN	ID	208-651-1110	DT	1.0
H	09/08	7:42AM	INCOMING	CL	208-651-1120	DT	1.0
H	09/07	11:08PM	INCOMING	CL	208-651-1120	NW	2.0
H	09/07	11:00PM	COEURDALEN	ID	208-651-1110	NW	3.0
H	09/07	11:00PM	COEURDALEN	ID	208-651-1110	NW	1.0
H	09/07	10:58PM	INCOMING	CL	208-651-1120	NW	2.0
H	09/07	10:23PM	INCOMING	CL	208-651-1120	NW	4.0
H	09/07	10:21PM	COEURDALEN	ID	208-651-1110	NW	1.0
H	09/07	10:03PM	COEURDALEN	ID	208-651-1110	NW	1.0
H	09/07	9:40PM	NEW YORK	NY	917-349-0702	NW	2.0
H	09/07	8:11PM	HAYDENLAKE	ID	208-772-9393	NW	2.0
H	09/07	8:03PM	COEURDALEN	ID	208-664-1952	NW	7.0
H	09/07	7:41PM	HAYDENLAKE	ID	208-772-7785	NW	8.0
H	09/07	7:37PM	HAYDENLAKE	ID	208-772-7785	NW	2.0
H	09/07	7:29PM	HAYDENLAKE	ID	208-772-7785	NW	7.0
H	09/07	7:23PM	HAYDENLAKE	ID	208-772-7785	NW	1.0
H	09/07	7:22PM	HAYDENLAKE	ID	208-772-7785	NW	1.0
H	09/07	7:16PM	Voice Mail Retrieval	CL	208-651-1234	NW	4.0
H	09/07	7:15PM	NAMPA	ID	208-250-9836	NW	1.0
H	09/07	7:14PM	NEW YORK	NY	917-349-0702	NW	2.0
H	09/07	7:01PM	Incoming	Roaming	NW	1.0	
H	09/07	6:16PM	Incoming	Roaming	NW	1.0	
H	09/07	11:39AM	Incoming	Roaming	NW	3.0	
H	09/07	11:39AM	Incoming	Roaming	NW	1.0	
R	09/03	9:53PM	COEURDALEN	CL	208-651-6789	NW	1.0
R	09/03	9:24PM	COEURDALEN	CL	208-651-6789	NW	1.0
H	09/03	8:52PM	Incoming	Roaming	DT	1.0	
H	09/03	8:24PM	Incoming	Roaming	DT	1.0	
R	09/03	5:04PM	COEURDALEN	CL	208-651-6789	DT	1.0
H	09/03	4:04PM	Incoming	Roaming	DT	1.0	

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H	09/02 9:31AM	NAMPA	ID 208-989-9113 DT	1.0
H	09/02 8:57AM	KETCHUM	ID 208-578-7847 DT	1.0
H	09/02 8:44AM	HAYDENLAKE	ID 208-772-9393 DT	5.0
H	09/02 7:20AM	INCOMING	CL 208-651-1120 DT	1.0
H	09/02 7:18AM	INCOMING	CL 208-651-1120 DT	3.0
H	09/02 7:06AM	INCOMING	CL 208-651-1120 DT	3.0
H	09/02 6:39AM	INCOMING	CL 208-651-1120 NW	1.0
H	09/02 6:35AM	INCOMING	CL 208-651-1120 NW	2.0
H	09/02 6:34AM	KETCHUM	ID 208-788-7847 NW	1.0
H	09/02 6:33AM	KETCHUM	ID 208-309-1419 NW	1.0
H	09/02 6:32AM	KETCHUM	ID 208-309-1419 NW	1.0
H	09/02 6:31AM	KETCHUM	ID 208-788-7847 NW	1.0
H	09/02 6:30AM	KETCHUM	ID 208-309-1419 NW	1.0
H	09/02 6:29AM	INCOMING	CL 208-651-1120 NW	1.0
H	09/02 6:28AM	COEURDALEN	ID 208-651-1110 NW	1.0
H	09/02 6:23AM	Voice Mail Retrieval	CL 208-651-1234 NW	1.0
H	09/02 6:23AM	KETCHUM	ID 208-788-9754 NW	1.0
H	09/02 6:13AM	INCOMING	CL 208-651-1120 NW	1.0
-H	09/02 6:10AM	HAYDENLAKE	ID 208-772-9703 NW	2.0
H	09/02 6:09AM	HAYDENLAKE	ID 208-772-9703 NW	1.0

- call from Julie

Total this Page:

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Total all Calls:

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Idaho State Police

REPORT OF INVESTIGATION

Sunday was
8/31/04 -
no phone calls
from Matt's cell phone
were made on
8/31/04

INCIDENT: 12/17/2003 Report #80		
DATE OF REPORT: 12/17/2003	TITLE: Report #80	WITNESS: Detective Robinson, ISPI R-IV
REPORT BY: SWANSON, FRED	CASE STATUS: PENDING	
CASE NUMBER: 2003-00844	DISTRIBUTION:	
REGION - COUNTY: 4 Twin Falls - BLAINE		

SYNOPSIS:

On December 17, 2003, Detective A.L. Swanson, Idaho State Police Region 1 Investigations interviewed Julie WESEMAN, Seila LAITITI, and Selina LAITITI in regard to their activities with Ms. WESEMAN's boyfriend, Matt JOHNSON, on the weekend of September 1 and 2, 2003. This interview was made at the request of Detective Stu Robinson, Idaho State Police Region 4 Investigations regarding the murder of Mr. JOHNSON's parents. See the details section of this report for information provided in the interviews.

DETAILS:

1. On December 15, 2003, Idaho State Police Detective Stu Robinson requested that I interview Julie WESEMAN, Seila LAITITI, and Selina LAITITI in reference to a murder investigation he was conducting in southern Idaho. I was asked to inquire as to the activities of Matt JOHNSON and them on the weekend of September 1 and 2, 2003.
2. On December 17, 2003, at approximately 12:25 PM, Julie WESEMAN met me at my office in Coeur d'Alene. Ms. WESEMAN told me that, on the weekend of the murders, September 1 and 2, 2003, Ms. WESEMAN met Matt JOHNSON in Moscow, Idaho on Saturday. They went with his fraternity to a rafting trip near Riggins, Idaho, leaving Moscow on Saturday (08/30/2003) afternoon. Ms. WESEMAN stated they never went south of Riggins that weekend. They drove to Riggins in Matt JOHNSON's Honda CRX following members of Matt JOHNSON's fraternity. Ms. WESEMAN and Matt JOHNSON returned to Moscow on Sunday (08/31/03) evening. Ms. WESEMAN left Matt JOHNSON in Moscow, and she drove back to Coeur d'Alene.
 - a. Matt JOHNSON told Ms. WESEMAN that his mother had left a message for him to call her. Matt JOHNSON had called his mother Sunday evening, and the conversation was related to troubles with Sara and her boyfriend, Bruno. Ms. WESEMAN did not recall the

details of the conversation that Matt JOHNSON had told her, but it had to do with Sara and Bruno and having trouble with Sara because of Bruno. Ms. WESEMAN explained that Sara had a history of lying, she was an angry kid, and was defiant and snotty.

- b. The last time Ms. WESEMAN was in southern Idaho prior to the murders was the weekend of August 25. She had gone with Matt JOHNSON to Sun Valley for Matt JOHNSON's uncle's wedding. At that time, Diane JOHNSON spoke with Ms. WESEMAN about Sara's relationship with Bruno because Sara was upset that Bruno was not allowed to go to the wedding with Sara.
 - c. Sometime between 6:30 and 6:45 AM on Monday, September 1, 2003, Ms. WESEMAN received a telephone call from a neighbor of the JOHNSONs in Sun Valley. Ms. WESEMAN was told that Sara had run to the neighbor's house that morning and reported her parents had been murdered. Ms. WESEMAN spoke with Sara on the telephone, who was hysterical. Sara had asked the question "who would do this?". There was no indication from Sara that she had committed the murders. After Ms. WESEMAN spoke with Sara, she tried calling Matt JOHNSON on his cellular telephone. Matt JOHNSON did not answer the telephone. Ms. WESEMAN tried Matt JOHNSON's telephone several times before he finally answered.
 - d. Ms. WESEMAN stated Matt JOHNSON had apparently been asleep. When she told him what had happened, he sounded as if he was in shock. It was decided she was going to go to Sun Valley with Matt JOHNSON. Seila LAITITI and Selina LAITITI had stayed the night with Ms. WESEMAN. She went in and woke them up. They decided they would drive Ms. WESEMAN and Matt JOHNSON to Sun Valley to provide support and do the driving. They drove Seila LAITITI's car to Moscow and picked Matt JOHNSON up at his apartment. They then drove to Sun Valley, leaving Moscow at approximately 1:00 PM.
 - e. After they arrived in Sun Valley, they did spend some time with Sara throughout that week. The only thing that was suspicious to Ms. WESEMAN about Sara was when Sara made an odd statement, "they think I did it". At that time, Ms. WESEMAN never thought that Sara committed the murders. From what she has learned of the investigation, Ms. WESEMAN's opinion of that has changed. My interview with Ms. WESEMAN ended at approximately 12:50 PM.
3. On December 19, 2003, at approximately 1:50 PM, Seila LAITITI met me at my office in Coeur d'Alene. Seila LAITITI told me she knew Matt JOHNSON through Ms. WESEMAN. She has known Ms. WESEMAN since high school. Seila LAITITI and her sister, Selina LAITITI, stayed the night with Ms. WESEMAN at Ms. WESEMAN's house on Sunday, September 1, 2003. At approximately 7:00 or 8:00 AM, Ms. WESEMAN woke Seila LAITITI and Selina LAITITI up and told them she had gotten a call from Matt JOHNSON's parent's neighbors about the JOHNSONs being murdered. Ms. WESEMAN tried several times to call Matt JOHNSON, who did not answer the telephone. Ms. WESEMAN did end up talking to Matt JOHNSON after Seila LAITITI, Selina LAITITI, and Julie WESEMAN had decided to drive to Moscow to get Matt JOHNSON to bring him to Sun Valley. Seila LAITITI did not hear the conversation between Julie WESEMAN and Sara, and only briefly heard the conversation with Matt JOHNSON. The last time Seila LAITITI knew Matt JOHNSON and/or Julie WESEMAN to be in Sun Valley was the weekend prior to the murders for Matt JOHNSON's uncle's wedding.
 - a. The three (3) ladies arrived in Moscow in the late morning, and then left for Sun Valley,

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with Matt JOHNSON in the early afternoon. On the drive to Sun Valley, Matt JOHNSON told them he had talked with his parents the night before, but Seila LAITITI did not recall exactly what they had talked about. After they arrived in Sun Valley, Seila LAITITI and Selina LAITITI had to wait in the car, about one (1) block away, while Matt JOHNSON went into the scene and talked with investigators and Sara. They waited a long time for Matt JOHNSON to return, approximately three (3) hours. At one point, Matt JOHNSON came back out to the car and told them his father had been shot in the shower, and his mother was shot in her bed sleeping. He also talked about a robe found in the garbage. Matt JOHNSON also told them there were knives planted on his mother's bed and his bed to make the murders look gang-related, meaning that Matt JOHNSON was the next victim. While down there, Seila LAITITI, Julie WESEMAN, and Sara LAITITI accompanied Matt JOHNSON to the house to pick some things up that Matt JOHNSON needed. Sara LAITITI did not go into the house. Seila LAITITI stated the house had not been cleaned up at that time.

b. My interview with Seila LAITITI ended at approximately 2:02 PM.

4. On December 19, 2003, at approximately 2:04 PM I interviewed Selina E. LAITITI at my office in Coeur d'Alene. Selina LAITITI stated she and her sister had stayed with Julie WESEMAN on Sunday (August 31, 2003) night. On Monday morning between 6:30 and 7:00 AM, Julie WESEMAN woke them up and told them Matt JOHNSON's parents had been shot. Julie WESEMAN told them she had tried to get a hold of Matt JOHNSON on his cellular telephone, but the telephone was apparently turned off because he was not answering it. Seila LAITITI and Selina LAITITI offered to drive Julie WESEMAN to Moscow, pick up Matt JOHNSON, then drive them all to Sun Valley where Matt JOHNSON needed to be with his sister. They left Julie WESEMAN's house and drove to Moscow. The met Matt JOHNSON at his apartment in Moscow. There was not really any conversation about the murders as Matt JOHNSON packed to go to Sun Valley.

- a. The four (4) of them left Matt JOHNSON's apartment in Moscow at approximately 1:00 PM and arrived in Sun Valley at between 7:00 and 8:00 PM. Through conversations Selina LAITITI heard, one (1) struck her as unusual. Sara LAITITI had made the comment that the killer wouldn't have been her boyfriend. She was asked who it would be then, and she said she didn't know. While in Sun Valley, Selina LAITITI, Seila LAITITI, and Julie WESEMAN accompanied Matt JOHNSON and Sara to their parents' house. Sara needed a schoolbook she needed to return and a change of clothes. Everyone except Sara went into the house. Sara stayed outside.

b. My interview with Selina LAITITI ended at approximately 2:14 PM.

5. It should be noted that I attempted to record the interviews on a digital recorder. Due to my error with the recording device, only one (1) interview was successfully recorded. The successful recording was of the interview with Seila LAITITI. I have copied this recording onto a compact disc, marked as Exhibit #327.
6. My involvement in this case is complete pending further requests for assistance.

PERSON DATA:

WESEMAN, Julie, 02-17-1981, female.

004390
420

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 6, 2003
Case No.: 2003-021
Transcribed By: Rosean Newman
Revised By: T. Michael Dillon
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MD: I'm sure she did. Uh how about Sarah's relationship with your stepfather?

MJ: It was pretty good he once in awhile you know he's got to lay down the law and discipline. But it was it was pretty good.

MD: Did he take her hunting too?

MJ: He had a couple of times but she really was never really interested in it like I was.

MD: Did she ever, do you recall if she ever was successful in when we say hunting we're talking about duck hunting or bird hunting or are we talking about big game hunting?

MJ: Uh just uh bird hunting, goose hunting and duck hunting.

MD: Do you recall if she ever was successful in uh?

MJ: She never took a gun out on the field.

MD: Really?

MJ: Yeah.

MD: Did she ever shoot any gun?

MJ: Uh not hunting no.

MD: How about in other capacities?

MJ: She has yeah I've seen her shoot at the gun club oh when she was about ten or twelve around there and

MD: Um hmm.

MJ: and she didn't like it too much.

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 6, 2003
Case No.: 2003-021
Transcribed By: Rosean Newman
Revised By: T. Michael Dillon
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MD: She just went out one time or had she gone out a few times?

MJ: She tried it I think twice in her life that I know of.

MD: And that's shooting uh skeet or trap?

MJ: Uh trap.

MD: Trap?

MJ: Yeah I've never seen her shoot a rifle.

MD: Okay, okay. How was her relationship with Diane, your mother?

MJ: It was really rocky. Um

MD: How so?

MJ: Many occasions my mom would call me and be crying and you know she's trying trying real hard to get along with Sarah and Sarah was kind of snooty and was really mean to my mom. And it was kind of back and forth, my mom would start something and then my sister would go back with it and you know and then my dad would have to step in and try to pull them apart.

MD: How far back can you recall, how far back um would these this relationship have gone?

MJ: This type of relationship?

MD: Yes, yes.

MJ: It's for the first couple of years my mom and my sister were close you know when she was an infant and but over the years they've just grown apart.

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Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 6, 2003
Case No.: 2003-021
Transcribed By: Rosean Newman
Revised By: T. Michael Dillon
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MD: What guns were in there do you remember again?

MJ: Uh

MD: You've got the .9mm, you have a, you mentioned a .22 handgun.

MJ: We had um a couple shotguns, uh couple rifles, I mean do you want me to be specific?

MD: No.

MJ: Okay uh just a bunch of shotguns and a bunch of rifles.

MD: Okay did uh Sarah ever shoot one of those, one of the rifles?

MJ: Um she has shot the .22.

MD: Well

MJ: My .22.

MD: Is that a bolt action? What is it like?

MJ: It's not a bolt action it's actually semi-automatic.

MD: Okay. Do you have any bolt-action rifles?

MJ: Yes.

MD: Do you know if she fired them?

MJ: I don't know.

MD: Do you know if she's did anybody ever show her how to uh load a bolt action?

MJ: Not of my knowledge.

MD: Your mom and dad never.

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
Case No.: 2003-021
Transcribed By: Marilyn Freeman and Fran Nix
Revised By: T. Michael Dillon
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if you opened up the, if you opened up the closet you wouldn't see the ammunition. I purposely remembered that was ...

MD: Was the ammunition uh or these boxes of ammunition in another larger box?

MS: I, I'll be honest with you. I cannot remember that.

MD: But they weren't sitting there ...

MS: They were not sitting there ...

MD: In this fashion, according to this picture?

MS: No. No.

MD: You're certain about that?

MS: I'm very certain.

MD: Okay. Now, Matthew had to come over here, I think it was the week of the wedding, or maybe during the wedding, to pick up a hammer and a tape measure out of the closet. Do you remember a hammer or a tape measure ever being in the closet?

MS: No.

MD: In the floor of the closet?

MS: No. Not mine.

MD: Okay. Was there one down ... well ...

MS: There's lots of ... there's all kinds of shop tools in the shop. I ... my first place I would look for a tape or a hammer would be in the ...

000125
424

Interview Of: Mel Speegle
Conducted By: T. Michael Dillon
Date of Interview: October 9, 2003
Case No.: 2003-021
Transcribed By: Marilyn Freeman and Fran Nix
Revised By: T. Michael Dillon
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MD: There was never a ... well, go on. Finish.

MS: Well, I don't know. There, there may be a closet downstairs he's talking about, but there's, there's nothing I have that's a hammer and a tape.

MD: Okay. Okay. And the weapons were located ... that's a fairly, it's a rectangular shaped closet.

MS: Correct.

MD: And if you open up the ...

MS: Unfold.

MD: ... the doors that fold in then fold out, when you pull out the left door ...

MS: Correct.

MD: If you look in, the weapons were to the right?

MS: Correct.

MD: Behind clothing?

MS: Correct.

MD: Anything against the wall at the far right?

MS: Yes. Yes.

MD: And we ... we just were in there, there was a box in front of the right hand door of the closet.

MS: That's always been there.

MD: That's always been there?

000126
425

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 6, 2003
Case No.: 2003-021
Transcribed By: Rosean Newman
Revised By: T. Michael Dillon
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MD: What was the closet uh when you say in the closet, were there items of clothing hanging from a bar in the closet or is it just an empty closet with...

MJ: Um there were a couple clothes and then a couple hangers and that was it.

MD: And was it was it just a group a normal traditional closet?

MJ: Yeah, yeah.

MD: And where were the tools that you were seeking?

MJ: Um what were they?

MD: Where well what were they?

MJ: Uh it was a I think my dad left a hammer and a tape measure up there.

MD: Were they in a toolbox?

MJ: Uh no they were just on the floor.

MD: On the floor.

MJ: I picked them up and took them downstairs.

MD: Were there any other items on the floor any boxes?

MJ: Uh I don't recall. I don't recall.

MD: Okay, so you don't remember seeing any, any boxes at all?

MJ: Hmm mm

MD: in the uh

MJ: I'm trying to think back it's been awhile. I don't remember.

001479 426

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 20, 2003
Case No.: AG 2003-021
Transcribed By: Frances M. Nix
Revisions By: Michael Dillon
Page 7 of 9



MD: Well that's okay, I mean, you just didn't remember seeing them. And that's fine.

MJ: Yeah, yeah.

MD: But where did you see the, where was the hammer or the tape measure situated?

MJ: Oh on the...okay the right door was shut on, and the left door was open and they were sitting in front of the right door that was closed.

MD: I see okay, okay so what did you do? Have to open up the right door, or did you just reach in behind?

MJ: No it, no it was sitting right there in front of the door. So I just grabbed it off the floor. I didn't actually go...

MD: Was it in the closet or out in front of the closet?

MJ: No outside the closet.

MD: Was there a box in front of the right door there?

MJ: [sigh] I don't remember, I don't remember.

MD: Was the hammer and the tape measure located next to the door of the closet, right door of the closet, or were they ...

MJ: Right in front of the right door of the closet, I believe.

MD: Okay. On the floor, was it closer to the bed? Or could they have been not uh could they be con-considered under the bed almost?

MJ: Oh no, no they're in plain sight, right in front of the uhm the doors.

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 20, 2003
Case No.: AG 2003-021
Transcribed By: Frances M. Nix
Revisions By: Michael Dillon
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MD: And uh what did you do, bring them back to your father?

MJ: No I just took them downstairs. We were working in the garage uh looking at some trim and we needed a tape measure and he knew there was one up there. So I went up there and I grabbed it and we were doing some measurements on some trim.

MD: Do you know where the hammer and the tape measure is now?

MJ: [sigh] no [laugh] my dad has got some many hammers and tape measures it's like finding a needle in a haystack.

MD: Can you describe the tape measure?

MJ: Oh it's yellow uhm probably a twenty-five footer. Uh ...

MD: Okay

MJ: Stanley. My dad's generally got the yellow Stanley's.

MD: And how about the hammer?

MJ: Uh just a finish hammer.

MD: What color was it?

MJ: Uh wooden handle with uh it's got red spray paint on it. 'cause my dad marked all his tools.

MD: Okay all right. Okay.

MJ: I think there was a hammer there. I can't, I can't exactly remember.

MD: All right, but you know, you, you do know you picked up a tape measure?

Interview Of: Matt Johnson
Conducted By: T. Michael Dillon
Date of Interview: October 20, 2003
Case No.: AG 2003-021
Transcribed By: Frances M. Nix
Revisions By: Michael Dillon
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MJ: Tape measure, yeah.

MD: All right, okay, well all right. Hey, thank you very much.

MJ: Yeah no problem

MD: I really appreciate it. Hang in there.

MJ: Okay.

MD: See you later.

MJ: See ya.

[TELEPHONE CALL ENDED - END OF TAPE]

001727 429

Transcript completed by: Heather Saunders
Spanish transcription by: Christopher Dimmick
Evidence Exhibit #142
Interview of: Consuelo Cedeno & Jane Lopez
With Jane Lopez Translating
Date: September 12, 2003
Interviewed by: Sgt. Brad Gelskey and Captain Ed Fuller
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BG: Okay. Does she remember whether Bruno's windows were clear, or were they fogged over? Does she recall?

JL: *Bruno's windows were clear or were they foggy, you know, wet?*

CC: *In the morning when I got up? No, well, it was as if the car had not been moved because the, if I had left later, I wouldn't have noticed that it had anything, but it had the, it was like wet, well, like that.*

JL: They were like fogged. But—but—but she—I mean she—realized that the car hadn't moved. At all.

CC: *What's more, look, what I have that I forgot to tell the police, I check the car mileage.*

JL: *Uh-huh.*

CC: *That is what I hadn't told him before, but I am always checking the car's mileage to know if Bruno is telling me lies or if Bruno goes out on me, I check miles.*

JL: She—Bruno, in the past has had issues, you know, he always out late at night, blah, blah, blah, in the past, when he was in high school.

CC: Every time.

JL: And so now what she does, is she's always checking on him. So like especially the car, I mean she checks the car to see if it's a full tank, she checks if it's—the miles have changed.

003026
430

Transcript completed by: Heather Saunders
Spanish transcription by: Christopher Dimmick
Evidence Exhibit #142
Interview of: Consuelo Ceden0 & Jane Lopez
With Jane Lopez Translating
Date: September 12, 2003
Interviewed by: Sgt. Brad Gelskey and Captain Ed Fuller
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CC: Every time.

JL: That's what she does all the time in the morning because—you know, because of what's happened in the past.

EF: Did she do it that day? (voices overlap)

JL: That Bruno, yeah, she did—she doesn't (unintelligible)

CC: Every time.

JL: Because that way like if—like situations, well now like this one, she knows when Bruno's lying to her, or if he's telling the truth. Because, you know, simply because of the issues he's had in the past.

EF: Okay. So let me talk to you about that. Did you talk to Bruno about this incident? Have you talked to Bruno about this incident? Have you asked him if he was involved at all in it?

JL: *You have talked to Bruno about this incident?*

CC: *No. No.*

JL: *Well, have you said to Bruno, "You did it or did you have something to do with it?"*

CC: *Oh, no, well, I can't because I know it's not true. Well, I know it can't be. I've talked to him (unintelligible). "Sarah has talked to you? What has she talked to you about?" "Just we love you, you know, but" "Uh, what do you think? Did Sarah fight with her parents or something?" "No, that, they, the*

Blaine County Sheriff's Department
Report of Investigation

Detective Harkins
Homicide Investigation
Case#- 030900016
Re: Interview of Bruno Santos



On 9-2-03 I spoke with Bruno Santos, the boyfriend of Sarah Johnson. This conversation took place near the crime scene, just after Santos arrived. Santos was met by officers, which were located just north of the crime scene. Santos voluntarily remained at the entry point until I arrived. I identified myself to Santos and spoke with him. Santos told me that he had last seen Sarah on Monday, September 1st, 2003. He explained that he had spent some time at her volleyball practice. Santos told me that he had not spoken to her since their conversation at volleyball practice. He specifically told me that they have had no conversations since that time. I asked Santos to explain his whereabouts on the night of 9-1-03 and 9-2-03. Santos explained that after being with friends on the night on 9-1-03 he returned to his residence, Balmoral Apartment #Q-101. Santos lives there with his mother and other family members. Santos told me that he returned at approximately 9:00 p.m. and watched television with his mother, until falling asleep on an air mattress in the living room at approximately 11:30 p.m. Santos explained that since other family members sleep in the bedrooms, he sleeps in the living room described above. Santos said that he was awoken the next day by a phone call from his cousin, who attends the Wood River High School. Santos explained that his cousin, Becky Lopez, informed him that she had become aware of the Johnson's death over the school intercom. Santos further explained that he called Sarah's home phone and also Diane Johnson's cellular phone and received no answer. After doing this, he drove to the Johnson residence. Santos explained that he last took a shower on the night of 9-1-03.


I asked Santos to explain the details of Alan Johnson coming to his residence on the morning of August 30th, 2003. Santos explained that on the night of August 29th, Sarah had lied to her parents and told them she was staying at a friend's residence. Sarah then stayed the night with Santos until her father found her vehicle at approximately 7:00 a.m. Santos explained that Alan Johnson came to the door and Sarah left. Santos explained that he, Alan, was upset and Alan stated to him, "I'm going to kick his ass". Santos told me that Sarah left with her father and another man, who I later identified as Jim Valvold. Santos further admitted to having unprotected sex with Sarah on a number of occasions. He further stated that they had spoken about marriage and love. Santos also explained that he had knowledge that Sarah's parents fought frequently.

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I asked Santos if he had ever been in the guesthouse of the Johnson property and he replied, "No". Santos did tell me that he had been at the Johnson's residence on a number of occasions. He explained that one of those times was to watch a movie with Sarah and her mother Diane Johnson. Santos explained that Mr. Johnson was out of town during that visit. He further explained about several other times that he was inside the residence. Most of these times occurred when the parents were gone. Santos also told me that he had been in the parent's bedroom, and possibly was on their bed. He stated that he recalled going through their room to gain access to the back yard with Sarah. The hot tub is located to the left of the Johnson master bedroom sliding door.

Santos told me that he did not know who was responsible for the murders. Santos was released and was informed that a detention warrant was going to be executed for personal evidence that would be obtained from his person. Santos explained that he understood that blood, hair, etc. would be collected from his body. Santos later complied with the collection of the blood, hair and print evidence.

On 9-5-03 I again spoke with Santos at the Blaine County Sheriff's Office. I explained to Santos that he was not under arrest and that he was free to leave. Santos understood and told me that he would answer my questions. Santos admitted to having unprotected sex with Sarah on a number of occasions. He could not recall the exact number of times, but stated that it was approximately seven occasions. Santos told me that he did not own a weapon, but did have a few 25 special shells at his residence. He explained that a friend of his had given the shells to him. He explained that they were not contained in a box, and it was just the shells. Santos further told me that he had spoken with Sarah on the night after the murders, 9-2-03. He recalled her saying, "Every time I try to sleep, I see my father's face". He explained that Sarah was very emotional and the conversation was relatively short. Santos then explained that approximately 3 to 4 weeks prior, he recalled Sarah coming to his residence. He recalled her being upset and making a statement about killing her dad. Santos also recalled Sarah saying this on one other occasion. Santos specifically said that Sarah's statement referred to "wanting to kill her dad". I then asked Santos about the pregnancy test found at Sarah's residence. Santos acknowledged that he knew about her taking a pregnancy test, but did not know of its results. When asked if Sara was pregnant, Santos said, "Maybe". I then asked Santos to explain the details of the Friday night when Sarah had stayed with him. Santos told me that this is when he asked Sarah to marry him. He explained that he got down on one knee and then placed a ring on her finger. Santos further explained that Sarah had said "yes" to his proposal. This interview with Santos is contained on a micro-cassette.


Detective Harkins

Interview Of: Bruno Santos
Conducted By: Detective Steve Harkins
Date of Interview: September 3, 2003
Case No.: 030900016
Transcribed By: Amy Andreason
Reviewed By: Steve Harkins
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BS: I don't know. I don't know. When I meet her I don't know if she was rich, poor, or whatever she was (inaudible) I don't know. (inaudible) I'm thinking rich, I think. I don't know (inaudible)

RS: Sarah never told you that they (inaudible)

BS: She never tell me she has money (inaudible) I love her.

Voices talking over one another

SH: Do you guys own any guns?

BS: Me?

SH: Yeah.

BS: (Inaudible)

SH: Not anymore?

BS: (Inaudible) long time ago (inaudible)

SH: What did you have?

BS: Huh...

SH: What kind of gun did you have?

BS: Like a (Inaudible)

SH: No, no gun (inaudible) bullets.

Inaudible conversation

SH: (inaudible) house?

BS: No, (inaudible)

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Interview Of: Bruno Santos
Conducted By: Detective Steve Harkins
Date of Interview: September 3, 2003
Case No.: 030900016
Transcribed By: Amy Andreason
Reviewed By: Steve Harkins
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RS: Cartridges?

BS: (inaudible)

SH: What did they look like?

BS: Like a 25 special (inaudible)

RS: ***Spanish speaking***

BS: (inaudible)

SH: (Inaudible) Just keep the bullets.

BS: Yeah.

SH: How many?

BS: I don't know (inaudible)

SH: What kind were they?

RS: Are they in your house now?

BS: Yeah (inaudible)

SH: Was it was it a box, or just some loose bullets?

BS: Yeah (Inaudible)

SH: Who gave them to you?

BS: Some guy (inaudible) that was a long time ago.

SH: (Inaudible)

BS: (Inaudible)

SW: Oh for weed, you got weed?

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Interview Of: Bruno Santos
Conducted By: Detective Steve Harkins
Date of Interview: September 3, 2003
Case No.: 030900016
Transcribed By: Amy Andreason
Reviewed By: Steve Harkins
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BS: (Inaudible)

SH: Was it a box?

BS: No, (inaudible)

SH: And they were 25 autos?

BS: (inaudible)

SH: Think so? 'kay.

BS: (Inaudible)

SH: Did you ever talk to Sarah that night, when you left practice?

BS: (Inaudible) I was waiting for her call (inaudible) and she don't call me (inaudible)

SH: Okay. Um, she called you last night?

Sept. 2

BS: Yeah.

SH: What did she say?

BS: (Inaudible)

SH: What—what did she say?

BS: (Inaudible)

SH: Did she say anything about her parents being murdered?

BS: (inaudible), she told me about the news (inaudible) don't believe that.

SH: She said what?

BS: Don't believe what they say in the news.

SH: Which was what?

002882
436

Christopher P. Simms
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Ketchum, Idaho 83340
PH 208 622 7878
FAX 208 622 7921



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
)	
Petitioner,	)	Case No: CV-006-324
)	
vs.	)	AFFIDAVIT OF
	)	ROBERT J. KERSCHUSKY
STATE OF IDAHO,	)	IN SUPPORT OF POST
	)	POST-CONVICTION RELIEF
Respondent,)	

I, Robert J. Kerchusky, after being first duly sworn, upon information and belief, depose and say:

1. I am a fingerprint consultant with an area of expertise in latent fingerprint analysis.
2. I am experienced in fingerprint analysis as the result of a life long career as an fingerprint technician with the Federal Bureau of Investigation, a latent fingerprint technician with the Washington DC Metropolitan Police Department and a Supervisor with the Bureau of Criminal Investigation, Department of Law Enforcement for the State of Idaho. (Copy of resume attached hereto and made a part hereof.)
3. I was retained by Petitioner's trial Defense Counsel as an expert witness and testified on her behalf during the criminal trial under cause number CR-2003-00182.

4. Petitioner was convicted of two counts of First Degree Murder and sentenced to life in prison, plus fifteen years due to a fire arm enhancement. Said convictions and sentence were upheld on direct appeal.

5. I have been retained to provide information and expertise to Christopher P. Simms, Attorney at Law, who represents Petitioner, Sarah M. Johnson, relating to a Petition for Post Conviction Relief under the above-styled cause number.

6. Subsequent to being retained by Petitioner's trial Defense counsel, despite my requests, I was not provided access to the entire police investigative file regarding fingerprints, nor was I given access to the crime scene, or physical evidence, in order to test same for latent fingerprints, nor were photographic depictions of same provided, so that I may have offered an opinion whether latent prints could or should have been found.

7. Trial counsel failed to elicit testimony from me regarding potential discovery of additional latent fingerprint evidence on the trash can lid, of the trash can where the robe and gloves were found; the closet door in Speegle's apartment, from which the murder weapon and ammunition were taken for use; or other smooth surface areas in Speegle's apartment or the crime scene generally.

8. Subsequent to the trial hereof I discovered that at least seven (7) latent prints lifted from evidence found at the crime scene, not just the three (3) fingerprints run through Idaho State AFIS by police investigation, met the criteria to be searched for match on Idaho State AFIS, WIN and FBI fingerprint data base, which fact could have been known had trial counsel provided all discoverable material to me prior to trial. Trial counsel should have known of this fact, should have elicited my opinion and testimony of this fact, but did not.

9. Trial counsel should have obtained a court order mandating Idaho State AFIS, WIN and FBI search of all unidentified latent prints for match, or alternatively made known to the jury that no effort was made to discovery a match or matches to all of the latent prints found at the crime scene.

10. I made trial counsel aware that in my opinion the latent unidentified palm print lifted from stock of the .264 rifle was a fresh print, based upon statements and testimony that the gun had not been touched, other than by Speegle, in approximately one (1) year, yet trial counsel failed to elicit testimony from me on this critical issue which would have cast suspicion away from defendant and toward an unknown shooter.

11. Trial counsel had knowledge of Del Speegle's testimony (and pre-trial statements to the same effect) that the .264 ammunition was purchased ten years prior to the shooting and had not been opened and gone through in that length of time. In my opinion these facts prove the latent prints found on the inserts and ammunition were fresh. I made trial counsel of the enormous importance of these facts yet, trial Counsel never brought out this testimony nor solicited my opinion on the subject at trial, which would have been that the latent fingerprints found on the insert and ammo were fresh prints. Furthermore, during my comparison of the latent to latent prints in this case, I was able to identify as a match one latent print from the scope to a latent from the insert from the box of .264 magnum ammo. That identification proves the latent print on the scope was fresh, yet trial counsel failed to elicit testimony from me on this subject. Furthermore, these fresh latent fingerprints did not match Sarah Johnson, Matt Johnson Mel Speegle, either victim, or other known inked fingerprints obtained during the investigation, thereby casting suspicion away from defendant and toward an unknown shooter

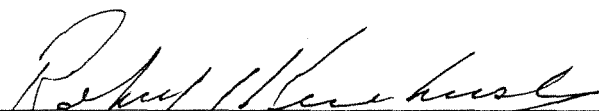
12. During my testimony Mr. Pangburn failed to elicit testimony regarding five latent fingerprint impressions left on four doorknobs. In my opinion only a fresh latent print will be discovered on a door knob because prior latent prints are invariably lost due to smearing. Likewise, it is my opinion that these latent prints found on the doorknobs were fresh prints. Therefore, in my opinion the latent print left on the doorknob on the master bedroom was likely the last person to have turned the knob.

13. Subsequent to trial I learned in a conversation with Maria Eguren, the State's AFIS technician and witness, that she was provided only three (3) photo-copies, not the actual latent lift cards of all unidentified latent prints found at the scene and on the evidence, with which to conduct an AFIS search for match. The most effective means to identify a match is with a high quality latent lift card, not a photo-copy. Eguren further advised me, that just prior to her trial testimony when it was too late to conduct a latent fingerprint search for match, that she was finally provided all of the latent lift cards that had been lifted from items of evidence but not matched to known inked fingerprints,

13. (a). Based on the above conversation it becomes clear that Tina Whitehall's trial testimony asserting that Ms. Eguren was provided all latent print lift cards was false.

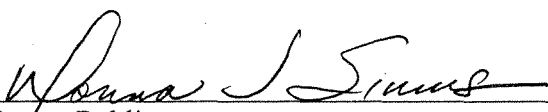
13. (b). Stu Robinson's Grand Jury testimony asserting that no latent prints were found at the crime scene was false, in that the record reveals that thirty nine (39) latent prints were found at the scene including on the .264 rifle scope, on two (2) .264 live rounds and on a .264 ammunition insert from which several rounds were missing.

DATED this 12 day of February 2009.



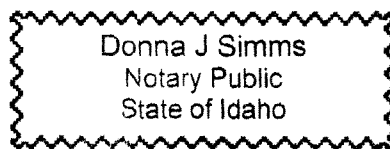
ROBERT J. KERCHUSKY
EXPERT WITNESS FOR PETITIONER

SIGNED AND SWORN before me on the 12 day of February 2009.



Notary Public

My Commission Expires: 20 Oct 2014



ROBERT J. KERCHUSKY

Latent Fingerprint Consultant
1235 N. Echohawk Way
Eagle, ID 83616
FAX*/PH (208) 939-4914

EXPERIENCE:

PRIOR EMPLOYMENT:

June 30, 1996, through current date, working independently as Fingerprint Consultant.

August 25, 1984, through June 30, 1996, employed as the Supervisor of the Identification Section by the State of Idaho, Department of Law Enforcement, Bureau of Criminal Identification, located in Meridian, Idaho.

1. Supervisor of the Identification Section.
2. Latent Fingerprint Examiner for all latent fingerprint work and related duties on a statewide basis.
3. Responed to all major crime scenes throughout the state, when requested by any law enforcement agency.
4. Certificate of Commendation received in September of 1985, for excellence in fingerprints. In 1988, presented with award for outstanding investigative staff. Received 30 or more letters of commendation regarding latent fingerprint work.
5. Testified in the State of Idaho one hundred or more times.

August 1, 1979 to August 1, 1984, Independent Latent Fingerprint Examiner.

November 1, 1969, to August 17, 1979, employed by the Metropolitan Police Department, Washington D.C., as a Latent Fingerprint Specialist. Duties consisted of:

1. Devising appropriate combination of techniques and chemical procedures to fit each assignment.
2. Developing and lifting or photographing of latent impressions.
3. The comparison and identification of the latent prints with known or inked prints
4. When possible, devising a tentative classification with the latent impressions developed or lifted.
5. Searching the latent through specialized or main files.
6. Developing prints of unknown deceased persons involving the use of delicate techniques in handling decomposed, charred, or water-soaked hands.
7. Preparing and explaining an enlarged photographic chart illustrating the identification.

ROBERT J. KERCHUSKY

Resume

Page 2

8. Gave expert testimony in complicated court cases when due to the importance of the case.
9. Prepared lectures and conducted Crime Scene Search Officer's Classes regarding preservation of evidence and development of latent prints.

Testified in various courts of law as an expert witness regarding latent print identifications, three hundred (300) or more times.

August, 1952, to November, 1969, was employed by the Federal Bureau of Investigation (FBI) Division, receiving six (6) months classroom training and practical fingerprint work with direct supervision. Assignments consisted of seven (7) years of supervising thirty (30) or more subordinate workers regarding fingerprint work.

AWARDS:

Special Service Awards for outstanding performance of duty October, 1972, January, 1973, July, 1976, and April, 1978.

CERTIFICATION:

Certified as a Latent Print Specialist by the International Association for Identification for nineteen (19) years.

Was awarded Life Activated Status from the International Association for Identification on September 25, 2002. This is an achievement to which many strive but few attain.



VOLUNTARY STATEMENT

TODAY'S DATE 9/9/03 TODAY'S TIME 9:30
NAME TERRI SANDERS DATE OF BIRTH [REDACTED]
SSN [REDACTED] PHONE [REDACTED] WORK PHONE [REDACTED]
STREET ADDRESS [REDACTED] P.O. BOX [REDACTED]
CITY Bellevue STATE IDAHO
DRIVER'S LICENSE # [REDACTED] STATE [REDACTED]
INSURANCE CO. [REDACTED] POLICY # [REDACTED]
DATE OF INCIDENT [REDACTED] TIME OF INCIDENT [REDACTED]
LOCATION OF INCIDENT [REDACTED]

AFTER speaking with officer fuller I retraced my
my actions of the morning of September 2nd 2003.

AT APPROX 5:40AM I WAS AWAKENED BY OUR DOGS BARKING
I went out to quiet them, I then went back to bed. My
alarm clock went off at 6:00AM I WAS AWAKE but NOT
ready to get up so I hit the snooze button. ~~XXXX~~
I WAS JUST STARTING TO DOZE OFF WHEN I HEARD A
VERY VERY LOUD GUN SHOT, and turned over and
looked at my clock, The last number on the read
out was a Nine. I laid there and listened
thinking that some one had shot a skunk
OR something. APPROX 2^{to} 3 min. Later A
Female started screaming. I got out of bed
and went to the other side where my husband
was asleep. I pulled the blinds up to see
if I could see anything, I looked up and

SIGNATURE Terri Sanders WITNESS [REDACTED]

000271 444



Report of Ed Fuller
Second Interview with Terri Sanders
1115 Riverview Dr.
788-5928
10-12-03

On 10-12-03 at approximately 11:00 AM I met with Terri Sanders at her residence. I talked to her about a statement that she made on September 9, 2003 about her dog waking her up at approximately 5:40 AM. Terri told me that her dogs started barking early that morning and woke her up, so she got up and told them to shut up. Terri told me that her dogs don't usually bark at cars that go by. Terri told me that she did not see or hear what they were barking about, and she did not see any lights going by in the street. She got them to settle down so they did not wake up the baby, then she went back to bed. When asked, Terri told me that she only heard one shot and that it scared her. She told me that there was quite a pause between that shot and the screaming. She told me that she had time to rationalize what the shot could have been before she heard the screaming.

I then talked to her about where she went after she called 911. Terri took me outside her house onto the deck that is located on the west side of her house. From that location you can see most of Riverview Drive to the south. Terri told me that Riverview starts at the highway and wraps around her house. The driveway is on the north side of the house, and that is also Riverview Drive. She told me that the road that connects to the west is Glen Aspen Drive. I could see the highway from the deck, but I could not see the actual intersection of Riverview Drive and Highway 75. Terri told me that she saw two police cars go the wrong way onto Riverview Drive, past her house. She told me that she went off the deck to the west to see if she could point them in the right direction. Terri told me that they only went down a little way, pulled into a driveway, turned around and came back, and went down Glen Aspen Drive. Terri told me that she went back into the house after that.

I asked Terri who it was that she saw leaving the neighborhood. Terri pointed to a house across the street. She did not know the people, but thought that their last name was Olson. She did not see any other cars come or go, except police cars.

Terri told me she did not see or hear anything that was unusual that night other than what she had already reported, and did not hear anything at 2 or 3 AM.

Terri told me that she did not know the Johnsons or have any interaction with them.

Ed Fuller

Ed Fuller

000273

445

Deputy Carpio

BLAINE COUNTY SHERIFF'S DEPARTMENT
210 FIRST AVENUE SOUTH
HAILEY, IDAHO 83333
Office: 208-788-5555 Fax 208-788-5559



VOLUNTARY STATEMENT

TODAY'S DATE 9/15/03 TODAY'S TIME 11:00
NAME Stephanie Hoffman DATE OF BIRTH [REDACTED]
SSN [REDACTED] PHONE [REDACTED] WORK PHONE [REDACTED]
STREET ADDRESS 1111 P.O. BOX [REDACTED]
CITY Bellevue STATE ID
DRIVER'S LICENSE # [REDACTED] STATE OR
INSURANCE CO. Safco POLICY # [REDACTED]
DATE OF INCIDENT 09/12/03 TIME OF INCIDENT 11:00 ?
LOCATION OF INCIDENT 1111

I was house sitting at Gail Darley's house Monday night (the 2nd). I read for awhile before falling asleep. I didn't sleep until around 1:00 am. I slept in the room on the NE corner of the house. To my left is a window to outside, to right is the door from my sleeping position. Sometime in the night I awoke startled or dreamed that I awoke, I can't tell which. I looked up and saw a figure standing in my doorway. It was clearly a male figure, he was wearing something on his head. His hands were either on his hips or resting on the door frame. He was between 5'4"-5'7"-maybe taller. No words were said, I felt scared and fell back asleep. Around 12:30 pm on the 2nd I

SIGNATURE Stephanie Hoffman WITNESS [REDACTED]

000209 446

awoke. I had a idea that something was going on in the neighborhood until I walked outside between 1:00-1:30. I slept through everything - the gun shots - the sirens the dogs barking etc. I was told of those events later in the day. I'm not sure what time it was that I saw the man or had the dream. ~~It was~~ The moon must have been bright or it was at the crack of dawn. The only thing I can make out from my memory was his profile. He was of a somewhat stocky build. I did not have the doors to the house locked. I felt safe enough not to. I passed this off as a dream, but later I got a little scared that it might not have been. I shared it with the owner of the house (Gail) and she advised that I talked to a police man. I did and that was on 9/4/03. Randy Tremble.

Stephanie Hoffman

000210



Andrea Karie, 1242 Riverview Drive

I left a statement for Andrea Karie at her house. She later called me back, and I went and spoke to her. Andrea Karie said she heard 2 gunshots. She said that the 1st shot was not as loud as the 2nd shot. Andrea Karie said that there was about 2 to 3 minutes between the shots. After hearing the 2nd shot she got up and looked out her windows. The only thing she saw was a police car on the highway with its lights on. She said that she did not hear any screaming; all she heard was a lot of dogs. Andrea Karie said she had been up since 0400 hours, and she had not heard anything prior to the gunshots. Andrea Karie also told me that her bedroom windows were open. There were 2 other people in the house who did not hear anything.

Rick Olsen, 1136 Riverview Drive

I left a statement for Rick Olsen at his residence. I later stopped by and spoke to him. Rick Olsen said he was outside sleeping in his camper due to fact that he was planning on going hunting. He woke up at 0500 hours and decided not to go, so he fell back asleep. Sometime after 0500 hours he was woken up by 1 gunshot. He did not hear anything else, so he went back to sleep. Rick Olsen's wife and family were in the house and they did not hear anything.

Stephanie Hoffman, 1111 Glen Aspen Drive

I left a statement form for Stephanie Hoffman, which she completed on 9/5/03. Stephanie Hoffman was house sitting for Gail Darley. Stephanie stated that sometime during the night she "woke startled, or dreamed that I woke", but she is unsure if she was dreaming or not. She stated that she saw a figure standing in the doorway of her room, a male between 5'4" and 5'7" who was of stocky build. Stephanie stated that she was frightened, but fell back asleep. Stephanie did not hear the gunshots or the screams. She stated that she told Gail about her dream, and Gail suggested she report it to the police. Stephanie said she spoke to Marshal Tremble on September 4th. Stephanie should be re-interviewed to pin down whether or not she was dreaming or awake when this happened.

On September 17, 2003 I spoke to Stephanie on the telephone and asked her about her statement. Stephanie still stated that she could not distinguish between whether her vision was a dream or reality, but she said she wanted to believe it was a dream. Stephanie leaves for Italy on September 25th for three months. She can be contacted through her mother, Karen Carr, at 788-4899 or 481-1899.

Dorothy Schinella, 1217 Glen Aspen Drive

Dorothy Schinella was given a statement form by the Idaho State Police to fill out. I later followed up with Dorothy Schinella about her statement. Dorothy Schinella said that prior to 0622 hours she heard a gunshot. She said she heard people or a person screaming then another gunshot. She said that when she heard the second gunshot she looked at her bedside clock and it said 0622 hours. Dorothy Schinella said that she thought it was approximately 20 to 30 seconds between the two gunshots.

00 192

Transcript completed by: Robyn Larese
Interview of: Linda O'Conner
Conducted By: Steve Harkins
Date of Interview: 10/16/03
Exhibit 215
Review by: Detective Harkins
Page: 3 of 6



SH: OK. Um, did you hear any voices or see any lights on at the Johnson guesthouse on, it would have been early morning, just before their murders.

LO: No, I was asleep.

SH: You guys were asleep.

LO: Till 6:00, when the alarm when off

SH: Anything you can think of that I didn't ask you, any other details that

LO: The only thing is that my son, his room is facing um facing the road, and he said there was a white truck that was speeding down the road in the middle of the night, 'cause he couldn't sleep and uh, but that could have been the um the Twin Falls newspaper delivery guy.

SH: Um hum

LO: But he said there was a white truck speeding down the road and that he was watching on TV in the middle of the night um, "Animal Planet". That's the only thing I can tell you.

SH: How old is you son?

LO: He's 13

SH: OK. Um, did he give a description of the truck, other than it was just a white truck. Like was it a big truck, small truck

LO: I would have to ask him that, I don't know, but I can ask him tonight.

SH: Yeah, maybe approximately what time it was

LO: Yeah, I don't think he knows what time it was, but you could probably go back in

PLAINTIFF'S
EXHIBIT
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REGULAR ARTICLE

Parricide: A Comparative Study of Matricide Versus Patricide

Dominique Bourget, MD, Pierre Gagné, MD, and Mary-Eve Labelle

Between 1990 and 2005, 64 parents were killed by their children in the province of Quebec, Canada. The authors reviewed all consecutive coroners' files on these cases and found that 27 mothers and 37 fathers were the victims of parricide. The sample included 56 perpetrators: 52 sons and 4 daughters; 9 cases of double parricide were found. Approximately 15 percent of the perpetrators (8/56) attempted suicide following the parricide. A psychiatric motive (stemming from depression or psychotic illness) was determined for 65.5 percent (36/56) of the perpetrators, and 67 percent of them had a psychotic disorder. Similarities and differences were found between cases of matricide and patricide.

J Am Acad Psychiatry Law 35:306-12, 2007

Five hundred forty-eight homicides were recorded in Canada in 2000.¹ About one-quarter (27%) of those homicides took place in Quebec, of which 42 (28%) occurred in an intrafamilial context. A parent was the victim in only three (7%) cases,¹ illustrating the rarity of this type of homicide.

Because parental homicide (also referred to as parricide) is an event with a low base rate, it presents a research challenge. For that reason, most of the literature on parricide consists of anecdotal case reports and small-cohort studies. The largest studies are those by Devaux *et al.*,² who reviewed 61 cases recorded between 1958 and 1967, and by Clark³ and Green,⁴ who reported on 26 and 58 cases of matricide, respectively.

Early explanations for parricide were predominantly psychodynamic interpretations. These theories included suggestions that the murderous impulse to kill a parent might have oedipal origins, as a defense against hostility or incestuous desires.^{2,5-9} Some have hypothesized that an unresolved incestuous con-

flict or a parent-victim who mistreats the child excessively may push the child to the point of explosive violence.^{8,10} In their study of 10 men charged with patricide, Singhal and Dutta¹¹ found that their fathers had been significantly more punitive than their mothers, and that the mothers had been overprotective and more tolerant than the fathers. The authors concluded that persons who commit patricide have an unusual, often difficult relationship with their fathers.¹¹ According to O'Connell,¹² a son who kills his mother is usually an unmarried, unambitious young man with an intense relationship with his mother, a feeling of social inferiority, and an absent or passive father. Similarly, Campion *et al.*⁷ suggested that men who commit matricide feel weak, hopeless, and dependent, and are unable to accept a separate, mature male role. In a review of 17 cases of female parricide in Europe between 1977 and 1986, d'Orban and O'Connor⁶ noted that the social situation of the mothers killed by their daughters was characterized by marked isolation.

Psychiatric explanations as to why a person might murder his or her parents arise from indications of a high rate of mental illness, primarily depressive or psychotic disorders, in parricide perpetrators.¹³⁻¹⁶ The risk of parricide may increase with the presence of unidentified mental illness¹⁴ or a lack of appropriate treatment for individuals with a psychiatric history.¹⁵

Dr. Bourget is Associate Professor of Psychiatry, University of Ottawa, Ontario, Canada, and Coroner, Quebec City, Quebec, Canada. Dr. Gagné is Associate Professor of Psychiatry, University of Sherbrooke, Sherbrooke, Quebec, Canada, and Coroner, Quebec City, Quebec, Canada. Ms. Labelle is a student, Biopharmaceutical Science Program, University of Ottawa, Ontario, Canada. The work was performed in the Quebec Coroner's Office, Ministry of Public Security, Quebec City, Quebec. Address correspondence to: Dominique Bourget, MD, Royal Ottawa Hospital, 1145 Carling Avenue, Ottawa, Ontario K1Z 7K4, Canada. E-mail: dbourget@rohcg.on.ca

Bourget, Gagné, and Labelle

A review of the literature indicates several factors that are associated with parricide. It is nearly always committed by sons,^{2,5,17-20} with matricide by sons the most common form of parricide in Canada.²¹ Perpetrators of parricide are often younger than 30,^{2,19} and many are single.^{3,4,12,15} The parricide is usually committed in the victim's house.^{4,7} Perpetrators often reside with the victim and frequently use painful methods and excessive violence in committing the murder.^{3,4,6,7}

The perpetrators' most common diagnosis is schizophrenia,^{2-4,6,7,11} with active symptoms of psychosis present at the time of the parricide.^{2,3,7,15,17,20,22} Persecutory paranoid motivation is often evident.⁴ Among schizophrenics, matricide occurs more often than patricide.² While both matricide and patricide may be associated with schizophrenia, Bluglass²³ suggested that daughters who murder their mothers are invariably schizophrenic. Devaux *et al.*² reported that 17 percent of the perpetrators studied attempted suicide after the offense; the parricide-suicide dynamic was more frequent in the cases of schizophrenic persons. Maas *et al.*²⁴ noted that the fathers of patients charged with both patricide and matricide were killed before the mothers.

To date, few comparative studies of parricide have been performed. Of the existing studies, those that included control groups compared a group of parricide offenders to a group of hospitalized persons with chronic schizophrenia⁶ and a group of female parricide offenders to a group of female filicide offenders.¹¹ These comparisons have not resulted in a clear delineation of the dynamics of parental homicide. Our objective was to examine the similarities and differences between samples of cases of matricide and patricide, to clarify factors that may be characteristic of parricide committed by men versus those characteristic of the same crime committed by women.

Methods

In an examination of coroners' files from the province of Quebec from 1990 to 2005, we identified 64 cases of parents murdered by their own children. Fathers were murdered by their son or daughter in 37 cases, and mothers were murdered in 27. All records, including medical and psychiatric records when available, were reviewed and compiled by the same two investigators, both of whom are coroners and psychiatrists. Autopsy reports were examined. The design of this descriptive study raised no ethics-related concerns, and the conduct of the study was

Table 1 Demographic Characteristics of Male Parricide Victims

	Female (n = 24)	Male (n = 36)
Mean age (\pm SD)	61.2 \pm 15.1	61.6 \pm 11.5
Civil status, n		
Married/C/L	15	20
Divorced	1	4
Widowed	6	4
Single	0	1
Unknown	2	7
Age range, y		
40-49	8	7
50-59	1	8
60-69	8	13
70-79	4	5
80+	3	3

granted authorization by the Office of the Coroner and the University of Ottawa Institute of Mental Health Research Ethics Board.

Results

Between 1990 and 2005 we recorded 720 victims of domestic homicide in Quebec. There were 64 parricides, with an average of 4 victims and a range of 2 to 7 victims yearly. Parricide accounted for nine percent of all homicides occurring in a domestic context. Sons were by far the most frequent perpetrators of parricide (52/56, 92.8%). The larger sample of men who committed parricide allowed us to compare male matricide to male patricide. The female parricide offenders murdered mothers in three cases and a father in one case. The victims ranged in age from 50 to 90 years. Although the female parricide sample is small ($n = 4$), some of the results specific to this sample will be reported to illustrate this rare phenomenon.

Parricides by Sons

Characteristics of Victims

As shown in Table 1, the male parricide victims ($n = 60$) included 36 (60%) cases of patricide and 24 (40%) cases of matricide. The matricide victims ranged in age from 40 to 95, with a mean age of 61.2 years (SD 15.1). The patricide victims were aged between 41 and 87 years (mean, 61.6; SD 11.5). Most of the victims were between 60 and 70 years of age with no significant difference in age between male and female victims. Only one victim had a psychiatric history, two had a history of violence, and four had a history of substance abuse.

Comparative Study of Matricide and Patricide

Table 2 Demographic Characteristics of Male Parricide Offenders

	Matricide	Patricide
Age, y		
	Range, 14-58	Range, 18-58
	Mean, 30.3	Mean, 32.8
	SD 12.6	SD 11.4
Age categories, y (n)		
	<20 (4)	<20 (2)
	20-30 (9)	20-30 (12)
	31-40 (5)	31-40 (8)
	41-50 (2)	41-50 (1)
	51-58 (2)	51-58 (3)

n, number of victims.

Characteristics of Offenses

Matricide. Almost all of the matricides occurred in the family home (22/24, 91.7%). A majority (17/24, 70.8%) of perpetrators were living with the parents at the time of the offense. The most common method of killing was use of a blunt instrument (8/24, 33.3%), followed by use of a knife (7/24, 29.2%) or a firearm (5/24, 20.8%). Other methods used were strangulation and carbon monoxide intoxication (2/24 and 1/24, respectively). A homicide-suicide dynamic was present in seven (29.2%) cases, and 13 percent (3/24) of perpetrators were intoxicated at the time of committing matricide. Three quarters of the matricides occurred without a warning sign (18/24, 75%). Although four of those perpetrators had had prior contact with a psychiatrist or a physician, the homicidal impulse was either not yet present or had not been disclosed. There was one case of retrograde amnesia following a matricide.

Patricide. Consistent with the cases of matricide, most of the patricides occurred in the family residence (34/36, 94.4%) and many perpetrators (21/36, 58.3%) resided with their parents at the time of their murderous acts. The most common method of

killing was by use of a knife (12/36, 33.3%) followed by use of a firearm (10/36, 27.8%), blunt instrument (8/36, 22.2%), strangulation (3/36, 8.3%), or intoxication or beating (both 1/36, 2.8%). In six (16.7%) instances, the perpetrator also attempted or committed suicide, and 19.5 percent (7/36) of perpetrators who committed patricide were intoxicated. In contrast to the matricides, a lower number of patricides occurred without a warning sign (25/36, 69.4%), and only 8.3 percent (3/36) of the perpetrators had had contact with a psychiatrist or a physician.

Characteristics of Perpetrators

The ages of the offenders ranged from 14 to 58 years, with a mean age of 31.4 (SD 11.5). Table 2 provides more details. Seventy percent (17/24) of perpetrators who committed matricide had a psychotic motive (i.e., delusional thinking) compared with 63.9 percent (23/36) of those who committed patricide. The difference between psychotic motive and sex of the victim is not statistically significant. Only 2 (8.3%) of the 24 who killed their mothers had no psychotic motive, while 11.1 percent (4/36) of those who killed their fathers had no psychotic motive. A motive was unknown for five of the matricides (20.9%) and for nine (25%) of the patricides. For both matricide and patricide offenders, the most common Axis I diagnosis was schizophrenia or other psychosis (54.2% for matricides; 46% for patricides), followed by depression (16.7% for matricides; 13.9% for patricides) and intoxication (4.2% for matricides; 5.6% for patricides). Substance abuse other than acute intoxication was found in one (2.8%) case of patricide. It is interesting to note that 8.3 percent (2/24) of matricide and 5.6 percent (2/36) of patricide perpetrators were found not to have an Axis I mental disorder.

Table 3 Characteristics of Parricide Victims and Parricide Offenders

	Sex of Offender	Suicider	Diagnosis (Axis I)				Unavailable/Unknown
			Schizo/Psychosis	Depression	Intoxication	Nil	
Matricide (n = 27)	24 Male	4 + 3F	13	4	1	2	4
	3 Female	—	2	—	1	—	—
Patricide (n = 37)	37 Male*	3 + 3F	18	5	2	2	7
	1 Female	1F	—	1	—	—	—
Double (n = 9)	9 Male	3 + 2F	6	1	—	1	1

*One patricide committed by two sons.

†Total of eight suicide attempts: four successful, four failed (F).

Bourget, Gagné, and Labelle

Parricides by Daughters

As female parricide is extremely rare, samples are not sufficient to use as a comparison group. Table 3 offers some limited elements of comparison. According to an investigation by d'Orban and O'Connor,⁶ some features of matricide by daughters show a close similarity to matricide by sons. Specifically, female matricide perpetrators were women in midlife living alone with an elderly, domineering mother in marked social isolation. The mother-daughter relationship was characterized by mutual hostility and dependence, and the killing was often performed with extreme violence.⁶

We found four cases of parricide by women in our study. The first was a severely intoxicated woman in her early 30s who killed her elderly mother with a knife. In the second case, a woman in her 50s killed her elderly father by administering a variety of intoxicating substances. This woman had attempted suicide and had a diagnosis of depression. The third case involved a female in her late teens who killed her middle-aged mother with a firearm. Upon initial assessment, the daughter presented psychotic symptoms. In the fourth case, a psychotic woman in her mid-30s strangled her elderly mother. All four cases of female parricide occurred in the family home where both victim and daughter resided.

Discussion

Unlike many studies in which samples of homicidal offenders incarcerated after the parricide were examined, the present study included all cases of parricide that occurred within a specific time frame in a territory with a population of approximately 7.5 million. Canada has a population of approximately 32 million; Quebec is the second largest province. Approximately one-fifth of the total homicides nationwide are perpetrated in Quebec (rate of 1.34 homicides per 100,000). Our sample also included instances in which the offender had committed suicide. While this allowed a complete sampling of the parricides and collection of more complete data, the disadvantage was that the four offenders who had committed suicide could not be assessed after their murderous acts.

In contrast to the results of d'Orban and O'Connor,⁶ we found that patricide occurred more frequently than matricide (57.8% patricides; 42.2% matricides). In addition, in contrast to the findings of

McKnight,²¹ patricide by sons outnumbered matricide by sons (60% versus 40%) in our study. The 60- to 69-year age group contained the highest number of victims: 13 men and 10 women (including two killed by a daughter). Most offenders were living with their victims at the time of the parricide (17/24, 70.8% matricides versus 21/36, 58.3% patricides). Geographical proximity may have been a risk factor in those cases that involved a dispute or strained familial context. It is noted that four adult perpetrators had only recently moved back to their parents' homes after separation from their spouses. Many offenders with schizophrenia had a high degree of psychosocial impairment and were never able to live independently. Our comparison revealed that matricides were more often preceded by a psychiatric or psychological contact than were patricides (4/24, 16.7% matricides versus 3/36, 8.3% patricides), but the difference was not statistically significant. Matricide perpetrators were less often intoxicated than those who committed patricide (3/24, 12.6% for matricides; 7/36, 19.5% for patricides). There was no criminal history of parricide perpetrators as indicated by police records.

Two-thirds (67%) of the male parricide offenders in our sample were motivated by delusional thinking. Two males presented with Capgras syndrome (misidentification syndrome) and believed that their parent victims had been replaced by impostors. Attempts to do physical harm to the misidentified person are believed to stem from the individual's belief that the imagined imposter in some way threatens his or her welfare.²⁵ Aggressive behavior may be facilitated because the individual no longer views the misidentified person as a close relative.¹³ Other studies confirm that patients with Capgras syndrome are more likely to adopt violent behavior or to commit parricide.^{10,13,25,26}

In eight instances, the victims' bodies were decapitated or mutilated, particularly their genitals. Of the six male murderers who mutilated the bodies of their victims, five were known to be schizophrenic. Perpetrators had not displayed positive psychotic symptoms such as delusions or hallucinations but had demonstrated irrational, disorganized behavior leading up to the offense. Of interest, two instances involved a double parricide. Double parricide occurs rarely and has received little attention to date. Studies of double parricide indicate that most adult perpetrators (nearly always male) are actively psychotic at

Comparative Study of Matricide and Patricide

the time of the offense or have an antisocial motive for their actions (e.g., monetary gain).^{24,27} A recent study of 11 men who committed double parricide found no single motive for the crime: six (54%) offenses occurred because of longstanding intrafamilial conflict, one involved a robbery, and another four (36%) involved delusional thinking at the time of the offense.²⁷ Our sample included nine cases of double parricide. Severe psychopathology was prevalent in this group, with seven (77.7%) diagnosed with schizophrenia (6/7) or depression (1/7). About half (5/9) had attempted suicide; three were successful. Most of the offenders in our sample were actively psychotic. The other two had expected to gain money from their actions.

Twenty-nine cases involved overkill, the use of an excessive amount of destructive violence. These murders were committed mostly by males (96.5%) diagnosed with schizophrenia (62%). One man (3.4%) had depression. Two men and one woman (10%) were severely intoxicated at the time of the offense. Only one (3.4%) of the offenders who used overkill had no psychiatric diagnosis, and five (17.2%) were undetermined due to lack of information.

Poor impulse control and loss of inhibition may result from a frontal lobe problem, and the elevated degree of impulsive violence found in cases of overkill associated with a diagnosis of schizophrenia raise an interesting question about the integrity of frontal lobe function in those individuals. Several studies using various investigative techniques have examined the question of frontal lobe dysfunction in connection with schizophrenia.²⁸⁻³⁷ Findings in neuroimaging studies indicate the presence of subtle structural and functional abnormalities.³³⁻⁴⁰ There is evidence of structural abnormalities in the amygdalae of men with schizophrenia and a history of violent behavior³³ and of impaired connectivity between the orbitofrontal cortex and the amygdala that was associated with impulsivity and aggressive behavior in schizophrenic men.³⁷ As orbital and medial areas are interlinked with limbic and reticular systems, damage to these areas can cause disinhibition and changes of affect.⁴¹ In a functional brain imaging study, Spalletta *et al.*³⁵ found significantly reduced prefrontal regional cerebral blood flow (rCBF) during completion of a measure of executive functioning among violent inpatients compared with those classified as nonviolent. These investigators suggested that reduced prefrontal rCBF may underlie a loss of inhibi-

tion that could lead to aggression. The term pseudo-psychopathic has been used to describe a syndrome in which disinhibition leads to abnormal behavior, sometimes associated with outbursts of irritability and aggression.⁴¹ Comparative studies examining the brains of violent, homicidal offenders with and without schizophrenia and analyzing the relationship between neuroanatomical findings and neurobehavioral aspects are likely to benefit our understanding of the illness and expression of violence in sporadic cases.

We found 11 cases of parricide in which the victim was more than 75 years of age. Of these cases, three (27.3%) perpetrators were significantly depressed and motivated by compassion over actual distress or pain experienced by the parent victim. The methods used by these offenders were considered nonviolent. Most died of carbon monoxide intoxication. The gender of victims was evenly distributed in the elderly victims group (six men, five women). Parricide of an elderly parent was strongly associated with a depressive or psychotic motivation (9/11, 81.8%). In two (2/11, 18.2%) cases, the motivation was unclear. In addition to the three cases of depression, a significant proportion of offenders had a psychotic condition (6/11, 54.6%). Some parricides occurred in the context of a conspiracy (3/64, 4.7%), anticipated monetary gain (4/64, 6.2%), or a history of mistreatment of the murderers by the victims (3/64, 4.7%). In these latter instances, only one perpetrator had a schizophrenic illness, while the others had no diagnosis.

Some parricides occurred following an argument (10/64, 15.6%). It is interesting to note that one-third (3/10, 30%) of those perpetrators who killed in the heat of an argument or dispute were not found to have a mental illness. Two of them were severely intoxicated (20%) and three others were psychotic (30%). Data regarding mental status were not available for the other two perpetrators. Overall, the most common cause of parricide was psychosis with a diagnosis of schizophrenia, but other factors such as the wealth of the victim, anger, or substance abuse were also involved in the offenses, albeit to a lesser degree.

A substantial proportion (67%) of the parricides investigated in this study were motivated by delusional thinking, in keeping with previous research that found an association between homicidal violence and some symptoms of psychosis, including delusions, hallucinations, perceptual abnormalities,

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or severe disorganization of thinking and behavior.^{14,15,42-44} The potential for violence toward others appears to be increased with persecutory delusions in particular,^{4,45-47} and emotional distress may heighten the risk that persecutory delusions will motivate violence.⁴⁸ As mentioned earlier, five (83%) of the six offenders in our sample who had mutilated their victims' bodies displayed severely disorganized thought and behavior at the time of the offense. Clinicians are aware that severe disorganization of thinking and behavior is sometimes accompanied by unmodulated extreme affective discharges such as excitement or rage, and assaultive or homicidal conduct or self-destructive behavior may be found in schizophrenic individuals with deficient impulse control. The risk of violence is increased with insufficient treatment of psychotic symptoms or nonadherence to prescribed antipsychotic medication.^{15,44} In our study, 30 percent of the parricide offenders who were intoxicated at the time of the offense were psychotic. Comorbid substance abuse may increase the severity of psychotic symptoms and heighten the risk of homicide.⁴⁹⁻⁵¹

Severe depressive states, with or without recognizable psychotic symptoms, may also contribute to homicide, which is often viewed as an act of extended suicide, with an over-representation of victims in the nuclear family and close relatives.⁵²⁻⁵⁶ In more than one-quarter (27%) of parricides involving elderly victims in our study, perpetrators were significantly depressed and wanted to commit suicide but did not want to abandon their victims.

Conclusions

Most research on parricide is retrospective and descriptive. To our knowledge, this is one of the largest retrospective studies of men and women who have committed parental homicide. We found that cases of matricide and patricide were similar in many respects. The significant prevalence of schizophrenia, the presence of psychosis, and the commission of psychotically motivated homicides suggest that psychosis associated with other characteristics in a child is a risk factor for parricide. Most cases occurred without warning or knowledge that anything was wrong with the killer. The tragedy could not be predicted. However, in the cases in which warning signs were present, indicators such as a recent disorganization of behavior and significant worsening of a pre-existing psychotic illness might be viewed as poten-

tial predictive factors in a young man with a history of prior assaultive behavior, especially within the family. We examined several cases in which it was established that the victim had feared for his life and sought help, but the concerns were not taken seriously. In contrast, there were cases in which the parent minimized the risk despite overt threats to his life. Clinicians treating individuals with schizophrenia would be wise to counsel significant family members who may sometimes be perceived negatively because they try to be helpful and promote treatment. A lack of insight and lack of medication compliance form part of a trail of clues leading to the parricide in these instances.

Our study was limited by a relative lack of data; not all subjects could be individually examined by standardized assessors, who had to rely on available data. Moreover, the small sample size of female parricide offenders limits conclusive statements regarding differences between male and female parricide perpetrators. Our study nevertheless offers an indication of various factors that may be characteristic of parricides by men versus those by women. Delineating similarities and differences between matricide and patricide might help to lay the groundwork for a profile of offenders that could assist in the assessment of parricide risk. Our study further highlights the role of psychosis in many cases of domestic homicide. As many of these cases progress through the next stage of legal resolution with verdicts to be rendered, data on the legal outcome are being collected. It will be interesting to find out how the legal system handles these cases, particularly in light of the fact that mental illness is so prevalent in this offender population. Although, based on our experience, murder in a family context is usually self-contained with a low risk of violent recidivism, these cases call for a high level of services in the psychiatric and psychosocial areas.

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Commentary: Parricides—Unanswered Questions, Methodological Obstacles, and Legal Considerations

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Unanswered questions about parricide abound. The scientific literature on parricide is modest and plagued by several methodological problems. In the present article, we seek to describe these problems, propose possible remedies, and review the legal considerations related to parricide. The rarity of the phenomenon creates significant barriers to the collecting of data about it. Moreover, generalization from any one study of parricide is also limited due to the low prevalence rate of the crime and ensuing difficulties with generating an unbiased sample of adequate size. The present article proposes strategies for accessing a statistically relevant sample size, in light of this low prevalence rate. Some of the remaining unanswered questions about parricide are also raised. Finally, legal questions surrounding criminal responsibility are explored.

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Most parricides fall into one of two categories. Adolescent parricides tend to be cataclysmic reactions to enduring, severe physical abuse, perpetrated by an individual who is typically neither conduct disordered nor psychotic. Adult parricides tend to be tragic conclusions of highly conflictual relationships between untreated psychotic individuals and their parents. The many questions about the killing of one's parent go unanswered in the modest body of scientific literature on parricides. The existing studies are limited by several methodological problems. Herein, we describe the problems, propose remedies, and review the legal ramifications of parricide.

Parricides are fortunately rare offenses, estimated to make up 1 to 4 percent of all homicides^{1,2} and 20 to 30 percent of homicides committed by psychotically ill individuals.² This low prevalence makes it difficult to investigate a sample with a size and lack of bias that allows for generalization of the findings.³ Bourget *et al.*⁴ deserve our gratitude for describing one of the largest samples of parricides to date. Their report stresses the role played by psychosis, nonad-

herence to treatment, and the lack of prodromal signs. It also shows the challenges that parricide studies pose. Most studies describe a small number of cases, constituting samples of convenience where case selection is not systematic. One strength of their work is that they studied consecutive cases.

In light of the low prevalence of parricides, how can investigators access a sample of adequate size? One strategy is to combine several data sets using the same data collection method. Weisman and colleagues⁵ used this technique to study the particularly rare phenomenon of double parricide (the killing of both parents). Combining cases from multiple sites by using a common method of data extraction, they generated the largest extant data set on double parricides. Another strategy, increasingly popular in many fields,⁶ is to design qualitative studies that emphasize phenomenology. The depth of analysis seen in such studies compensates for their limited generalizability. Ideal participants in such studies are individuals who have killed a parent, have been adjudicated, have been successfully treated, and are sufficiently improved to describe cogently their experience of parricide.

Another research strategy consists of widening the scope of inquiry from parricides to the entire continuum that lies between completed parricides and non-lethal acts of child-on-parent violence.^{7,8} One argu-

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ment in favor of this strategy is the following: Whether a parent survives an attack by his or her child depends on many factors, including the quality of emergency services in that community (e.g., promptness of responses to 9-1-1 calls). Distinguishing completed from attempted parricides may thus be arbitrary. Our research group described individuals found not guilty by reason of insanity (NGRI) of attempted murder of a parent as presenting a very similar clinical picture and the same challenges in psychotherapeutic treatment as individuals found NGRI after murdering a parent.⁹ Marleau *et al.*² also found attempted and completed parricides to be quite similar, whereas Weisman and Sharma¹⁰ found significant differences. Investigating the entire continuum of child-on-parent violence is likely to reveal qualitative differences among different types of violent events: those in which potentially lethal means were used with the intent to kill (e.g., stabbing), events involving potentially lethal means without the intent to kill (e.g., slashing), and events involving less dangerous means and no intent to kill (e.g., beating). Future empirical investigations will shed light on the question of which segments of this continuum are sufficiently similar to warrant the same treatment, both from the judicial system and from the mental health system.

The subject of victim gender and offender gender illustrates how generalization from any one study of parricide (or any other rare phenomenon) is limited. Parricide is predominantly a male-on-male (son-on-father) crime, though this predominance has faded in recent decades.¹¹ In the extant literature, male parricides outnumber male matricides about 2:1 (a ratio similar to Bourget's 3:2 ratio), and male parricides outnumber female parricides by about 5:1¹ (a ratio considerably lower than the 15:1 ratio in the data of Bourget *et al.*⁴). Though it is always true that data aggregated across studies generate better estimates of population parameters than individual studies permit, it is especially true in fields of inquiry in which typical sample size is small.

What are the main questions about parricide that remain unanswered? We know that most children do not kill their abusive parents and that most individuals with a psychotic illness do not kill their parents. It is the particular nexus of biopsychosocial factors connecting abuse and parricide or psychosis and parricide that remains to be established. In other words, does everyone who has a psychosis and has conflicts

with parents pose at least a slight risk of parricide? Does every abused child pose at least a slight risk of parricide? Bourget and colleagues⁴ point to an important feature of this nexus: treatment nonadherence. Our research group has also found nonadherence to play a crucial role in parricides.^{12,13}

In contrast to the study by Bourget *et al.*,⁴ we found "warning signs," such as excessive risk-taking by the parent. For example, the parent of a psychotically ill individual who refused treatment invited his child to live with him despite their extremely contentious relationship, which involved threat of harm to the parent and the child's insistence on possessing a gun. Beyond the fact that identifying "warning signs" involves a powerful retrospective bias, the difference between the findings of Bourget *et al.*⁴ and ours illustrate once again the limitations of small samples.

Another unanswered question concerns the relationship between adult parricide and prior abuse of the parricidal offender at the hands of the victim. There is a strong consensus in the literature that child and adolescent parricides typically follow lengthy, severe abuse by the parents.^{1,14-17} The prevalence of prior abuse among adult parricides is unknown. The lack of data is all the more amazing in that several investigators have described the offender-victim relationship and have used terms such as "disturbed rearing patterns,"³ "hostile and dependent-aggressive" relationship,¹⁷ or "cruelty."¹⁸ It is as if they stopped short of perceiving the behavior as abuse, maybe for fear of blaming the victim. It would be important to know how commonly abuse precedes adult parricides. If abuse were found to be a common precursor of adult parricides, it would be possible to educate patients, their families, mental health providers, emergency department staff, and others about this risk factor, with the goal of prevention.

Parricides raise legal questions with regard to criminal responsibility. In parricide cases, the facts tend to be more emotionally salient, and it is conceivable that a judge or jury might be persuaded to arrive at a more drastic outcome than in another homicide. In the event of an insanity defense for parricide, a judge or jury may be more likely to be persuaded of a defendant's mental incapacity because of the relative inconceivability of the crime.

Courts seek to determine an offender's level of intention to kill or harm the victim or victims. For example, the courts try to determine whether the

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offender willingly and knowingly killed the victim or victims, whether the offender should have known the risks inherent in his or her actions, or whether the offender failed to take reasonable care in his or her actions. Each of these levels of intent demands a different level of punishment.

Parricide offenders may try to raise legal defenses relating to mental state at the time of the crime in an effort to show that they lacked mental capacity. Two possibilities suggested by Bourget *et al.*⁴ are mental incapacity in the form of psychosis and self-defense. In many jurisdictions, insanity may serve as a legal defense if it can be established that the offender, at the time of the crime, could not appreciate the wrongfulness of his or her actions or was unable to control his or her actions due to a mental illness or defect.^{19,20} Self-defense is also a legal defense to murder. To plead self-defense, a perpetrator in many jurisdictions must establish that he or she had a reasonable perception of imminent harm to self or others, that the use of force was necessary to avoid the danger, and that the force used in self-defense was justified by the degree of threatened harm. Although not widely recognized in the legal community, academic arguments have been made for expanding self-defense theory, using what has been labeled battered-child syndrome as a defense to parricide.²¹ The theory of battered-child syndrome is modeled after battered-woman syndrome and suggests that in the case of the severely abused child, parricide is an act of desperation, as the child sees the death of the abusive parent as the only way out of an intolerable situation (even if the abuse is not occurring at the time of the offense). It has been suggested that current definitions of self-defense are too narrow and should be expanded to include battered-child syndrome as a legal defense to parricide.²²

An additional consideration with regard to mental state legal defenses is posttraumatic stress disorder (PTSD). A defendant may assert that the crime occurred in the midst of a PTSD-related dissociative state, or "flashback," and thus claim insanity (as reflected in an impaired ability to appreciate the nature of his or her actions with regard to the law at the time of the offense). This defense is more likely to be persuasive in the event of a documented prior history of flashbacks, particularly under circumstances mirroring those preceding the crime.²² Specifically, three causal connections must be supported: between the traumatic event and development of PTSD

symptoms, between PTSD symptoms and the offense, and between the traumatic event and the offense.²³ While PTSD-based insanity defenses are not particularly successful, in the case of abuse-motivated parricides, a PTSD defense appears to be especially conceivable when a perpetrator with a diagnosis of PTSD murders a parent in the home where the abuse occurred. Overall, PTSD is most often raised during sentencing as a mitigating factor.²⁴

Bourget *et al.*⁴ suggest that three of the parricides in their study may have arisen out of compassion for the victims. Euthanasia, the intentional killing of a person for his or her alleged benefit, is not a legal defense to murder. The issue of physician-assisted suicide continues to be hotly debated. In 2006, the United States Supreme Court upheld Oregon's physician-assisted suicide law for terminally ill patients.²⁵ Oregon is the only state that allows physicians to provide information, guidance, and the means to take one's own life, with the intention that the suicide will be carried out. This ruling applies in very narrow circumstances that do not include mercy killing by family members. One reason for the illegality of "compassionate" killings is the social concern that ulterior motives (e.g., financial gain) may play a role in such homicides. In contrast, depending on the facts of the case, if it can be proven that the victim was elderly, infirm, and wanted to die, these circumstances may serve as mitigating factors at sentencing.

In their study, Bourget *et al.*⁴ found intoxication to be the third leading cause of parricide. As with euthanasia, voluntary intoxication is not a legal defense to murder, nor can it be used as a mitigating factor when considering the appropriate level of punishment. Public policy does not support the use of voluntary intoxication as a legal defense to one's actions or as a mitigating factor at sentencing, as it would suggest that willfully losing one's self-control is socially acceptable. Nonetheless, some jurisdictions may recognize substance abuse, secondary to a PTSD diagnosis, as a mitigating factor when the offender is perceived as self-medicating PTSD-based emotional distress.

Methodological improvements in child-on-parent violence research is likely to enrich our understanding of this phenomenon. Such improvements will enhance our ability to address more effectively the prevention, treatment, and judicial disposition of cases involving parricide or attempted parricide. Of particular importance is the matter of how to treat parricidal offenders. What contributes to their recovery? What level of supervision do they typically re-

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quire? What are common postcrime developmental trajectories? The answers to these questions will allow us to improve the treatment of those who commit this unusual form of killing.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
)	
Petitioner,	)	Case No: CV-006-324
)	
vs.	)	AFFIDAVIT OF
	)	DR. RICHARD WORST
STATE OF IDAHO,	)	FORENSIC PSYCHIATRIST
	)	IN SUPPORT OF PETITION FOR
Respondent,	)	POST-CONVICTION RELIEF

I, DR. RICHARD WORST, FORENSIC PSYCHIATRIST, after being first duly sworn, upon information and belief, depose and say:

1. I am a FORENSIC PSYCHIATRIST, I am Board Certified by both the American Board of Psychiatry and the American Board of Neurology in general psychiatry and forensic psychiatry. I received special training in child psychiatry during my residency program and have regularly participated in multiple training sessions for continued medical education, including child and adolescent psychiatry and forensic psychiatry. I have been in active practice of psychiatry for over forty (40) years, with at least one fourth of my practice focusing on the diagnosis, treatment, and evaluation of children and adolescents. During the past forty years, I have treated numerous children and adolescents, as well as adults, who have been the victims of various types of abuse and I have also seen a large number of children, adolescents and adults who have been

perpetrators of abuse.

2. I possess, not a mere general education and practice in psychiatry but a specialized knowledge of child development, individual and family dynamics, the art of interviewing children and mental illness as those topics relate to Forensic Psychiatry. I am familiar with the state of the scientific psychiatric literature regarding patricide, (killing one's father) matricide, (killing one's mother) either known as parricide. I have evaluated the Petitioner and one other adolescent convicted of parricide. I have also evaluated a number of adolescents who were threatening parricide, and assume my intervention prevented those parental homicides.

3. As a result of my involvement in the underlying criminal prosecution, evaluation of Petitioner and expertise in Forensic Psychiatry I have unique knowledge of facts and circumstances pertaining to the case.

4. I met with Petitioner Sarah Johnson on three occasions, May 6, 2005, May 13, 2005 and June 9, 2005. Each of the first two meetings was in two, two hour sessions, and the last a single one and one half hour session, all as part of a standard psychiatric interview. I reviewed collateral data from records, and made phone contact with a number of important people, including pre and post crime, treating therapists, all considered part of a standard forensic examination. I reiterate here the testimony I produced at the sentencing hearing as transcribed on pages 6285-6296 of Volume XI of the Transcript on Appeal.

5. My conclusions from the formal mental status examination are that Sarah Johnson was a believable adolescent, was not schizophrenic or psychopathic, lacked of anti-social personality and was not prone to violence, suffered from clinical but not

psychotic depression was rehabilitative and who denied involvement in killing her parents.

6. If I had been called to testify during the guilt phase of the underlying criminal prosecution I could have testified that parricide is very rare, particularly among girls, and is statistically close to non-existent among girls who have not been physically and or sexually abused, nor diagnosed with Schizophrenia, Bipolar Disorder, Substance Abuse, or significant mental retardation. Further, I would have testified that I evaluated Sarah Johnson, and did not determine that she had been physically or sexually abused, did not present with Schizophrenia, Bipolar Disorder, Substance Abuse or significant mental retardation.

7. I have been asked to provide information and expertise to Christopher P. Simms, Attorney at Law, who represents Petitioner, Sarah M. Johnson, relating to a Petition for Post-Conviction Relief under the above-styled cause number.

8. My usual and customary rate for provision of professional service is \$250 per hour, and I estimate that I would require no more than 50 hours of time to provide the necessary services herein, for a total dollar amount of no more than \$12,500.00.

DATED this 12th day of MARCH 2009.

Richard W. Worst MD

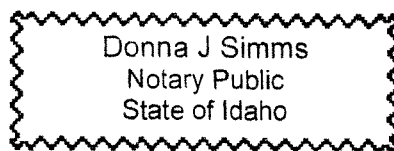
DR. RICHARD WORST
FORENSIC PSYCHIATRIST

SIGNED AND SWORN before me on the 12TH day of March 2009.

Donna J Simms

Notary Public

My Commission Expires: 20 OCTOBER 2014





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Wednesday, November 12, 2008 3:01 PM CST

Experts: Abuse often behind young children killing parents

**By Amanda Lee Myers
Associated Press**

PHOENIX -- As an 8-year-old Arizona boy sits in a juvenile jail, charged with murdering his father and another man, the biggest unanswered question is "Why?" Police say the boy planned and meticulously carried out the shootings, but they haven't discussed a motive. |

Child psychologists and others say that while many factors could cause a child to kill a parent, the most common in other cases has been severe abuse.

No homicides were committed in the United States by a child 8 and younger between 2005 and 2007, according to FBI statistics. Twenty-one children ages 5 to 8 did so in the 10-year period ending in 2004, the statistics show.

"These are head-scratchers, especially when you have young people," said defense attorney Paul Mones, who has represented children accused of killing their parents and written a book called "When a Child Kills."

He said that when it does happen, the overwhelming majority do so for one of a handful of reasons - mental health issues within the family, or physical, emotional or sexual abuse in the home.

"Many of these kids who commit homicides suffer from some level of traumatic stress disorder," Mones said. "They're living in an environment that is oftentimes extremely dysfunctional, oftentimes violent."

In Ohio, for instance, a 13-year-old boy told a judge in a 2000 case in Cleveland that he shot his father with a revolver in self-defense because of years of abuse that included beatings with hangers and mop handles.

A 12-year-old boy from Douglas, Ariz., is accused of fatally shooting his mother following an argument in August. Defense attorneys say the boy was verbally and physically abused.

James Alan Fox, a criminologist at Northeastern University in Boston, said in very rare cases, children kill because they don't have a conscience. They are "the so-called bad seeds ... who are capable of committing murder without feeling an emotional response," he said.

"More often these children are responding to events in their lives," Fox said. "It's usually physical abuse of some sort. It can be to protect themselves or another family member against physical or sexual abuse, and less often is a reflection of severe mental illness."

St. Johns, Ariz., police Chief Roy Melnick said last week that investigators were looking into whether the boy in the latest case might have been abused, although he later told some media outlets they have found no evidence of that. Melnick said the boy confessed to the shootings but wouldn't discuss specifics.

A gag order has been imposed on the boy's attorney and others involved in the case, but the attorney previously claimed police questioned the child without representation from a parent or attorney and didn't advise him of his rights.

Those who know the boy and his family say there was no abuse - that his father, Vincent Romero, was a good dad trying to raise his son to be polite and respectful.

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Hundreds of mourners packed a funeral Mass on Monday for Romero. The funeral for the other victim, Timothy Romans, who rented a room from Romero, was scheduled for Saturday.

Romans' wife, Tanya, said her husband lived with Romero in St. Johns during the week because of his construction job but returned to his family in metropolitan Phoenix on weekends. Romero and Romans were co-workers.

Tanya Romans said her husband closely followed their teenage daughters' sporting events and sent his love through calls and text messages regularly.

"I can't imagine myself being without my husband," she said Tuesday. "He would always call me even though he worked far away."

She declined to discuss the investigation into her husband's death.

Prosecutors said there was no record of any complaints filed about the boy with Arizona Child Protective Services and that the youngster had no disciplinary record at school.

Another factor often found among children who kill is a broken home, said Robert Heckel, professor emeritus in psychology at the University of South Carolina and co-author of "Children Who Murder: A Psychological Perspective."

"The thing that stands out and is present in many if not most of these cases is a broken home, a disrupted family situation," Heckel said.

In the Arizona case, the boy's parents were divorced. Romero had full custody and the boy's mother, Eryn Thomas, lives in Mississippi, although she had been in St. Johns for a visit the weekend before the shooting. Romero recently remarried.

Heckel said it's only a matter of time before the motive is revealed.

"There are not that many mysteries," said Heckel, who is not involved in the case. "I would not be surprised if there's some pretty reasonable explanation and understanding of what happened - it's just a matter of digging."



Publisher: SAGE Publications
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"Although the book is about murder. Heide does not limit herself to purely individual or family-based analysis. She is interested in connecting all the factors which lead to these tragic situations, in good and bad parenting and in social reform. It is this breadth of analysis which makes the book so readable and so useful." --Judith Bevan in ACCO Child Psychology & Psychiatry Review "This book is a compassionate examination of adolescent patricide offenders (APO's) in the United States of America. It could be commended to anyone interested in how children are initiated into society." --Joanna Adler, University of Kent at Canterbury Kathleen Heide's sensitive and important account of family life gone wrong examines the shocking phenomenon of adolescents who kill their parents. Using actual case studies and a careful analysis of FBI data, Kathleen M. Heide discusses the motivations and backgrounds of these troubled adolescents, and what emerges is a tragic portrait--the adolescent murderer is almost always a terrified victim of severe child abuse, neglect, and dysfunctional parenting who kills out of desperation. Drawing upon her skill and experience as a scholar, clinician, and expert witness, Heide asserts that a combination of five interconnected problems creates the conditions for parricide: The youth is raised in a chemically dependent or otherwise dysfunctional family; the child is severely abused sexually, physically, and/or verbally; violence in the child's family escalates; the youth becomes increasingly vulnerable to stressors in the home environment; and the child has ready access to a firearm. Why Kids Kill Parents begins with a foreword by notable criminologist Hans Toch, and concludes with an examination of types of intervention that are effective in treating severely abused children who kill their parents. Heide proposes ways in which the media and the educational system can prevent child abuse and parricide by fostering functional families and mitigating the effects of dysfunctional ones. Why Kids Kill Parents is essential reading for all those who care about the nurturing of children and families in today's society, as well as professionals in juvenile justice, criminology, law, mental health, education, and youth advocacy. "Heide's book offers an integrative understanding of both the dysfunctional family and child who kills. Of particular interest to clinicians is the chapter on assessment. This volume is the most comprehensive resource found on children who kill." --Youth Violence "The resolution of such questions as 'What is a just response to a parricide by an abused child?' is a societal one. Our society permits divergent ideas (and data) to surface and to compete for adoption. In such a system a scientist and clinician such as Kathleen Heide can play a precious role. The work summarized in Why Kids Kill Parents is a testament to this role. It is also a credit to its author, who cares about ameliorating suffering and reducing despair." --from the Foreword by Hans Toch "Why Kids Kill Parents contains a goldmine of material for diverse theoretical and practical applications, from aggression theory and legal analysis to specific, practical suggestions for therapy. Kathleen Heide has produced a valuable resource that, I hope and expect, will become a model for similar investigations and serve as a foundation for rational policy development." --Carolyn Rebecca Block, Illinois Criminal Justice Information Authority, Women & Criminal Justice Vol. 6 No. 2 1995 "I have read Dr. Heide's book, Why Kids Kill Parents, and believe it is the best available book on the topic. . . . Unlike the other books on this topic, Why Kids Kill Parents indicates a comprehensive knowledge of the prior literature and of the frequency and pattern of

juvenile homicide. No other book covers etiology and treatment. Dr. Heide is a scientist, advocate, and clinician, and her book reflects all these perspectives." --William Willbanks, Florida International University "In an unprecedented fashion, Kathleen Heide offers comprehensive definitions of childhood maltreatment that delineate the nature and scope of various types of abuse and neglect, which the adolescent parricide offender endures in a family where violence is all too common an experience. . . . This book is a must-read for all professionals who are involved in the care of and in contact with children and adolescents." --Susan Crimmins, MSW, Clinical Social Worker and Researcher, Journal of Contemporary Criminal Justice Vol. 9 No. 2 1993 "It is easy to see why this book has captured a commendable degree of media attention. It is well-written, fascinating in fact, so it is extremely interesting to read. Underlying this is a crucial observation, that Kathleen Heide's work has been well-received within legal, clinical, and other professional circles--that it has affected and is likely to have further implications for the way that adolescent parricide offenders are handled by the courts." --Patricia Van Voorhis, Assistant Professor, University of Cincinnati


Booknews

Criminologist and psychotherapist Kathleen Heide focuses on families that breed violence and the relationship between patricide and child abuse. A discussion of maltreatment, who kills, youths at risk, and legal and psychological issues is followed by three detailed case studies and a discussion of intervention, society's contributions to both the problems and solutions. First published in 1992 by Ohio State University Press. Annotation c. Book News, Inc., Portland, OR (booknews.com)

More Reviews and Recommendations

Biography

Dr. Heide is a Full Professor in the Department of Criminology at the University of South Florida, Tampa and is an internationally recognized consultant on adolescent homicide and family violence. She is a licensed mental health counselor in the State of Florida and has been court-appointed as an expert in Florida Circuit Courts in homicide, sexual battery, juvenile, and family matters. Dr. Heide's publication record includes more than 100 publications and presentations in the areas of adolescent homicide, family violence, personality assessment, and juvenile justice, along with two books - Why Kids Kill Parents (1992) and Young Killers (1999). She received her B.A. from Vassar College in Psychology and her M.A. and Ph.D in Criminal Justice from the State University of New York at Albany.



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Monday, Nov. 23, 1992

When Kids Kill Abusive Parents

By Anastasia Toufexis

In the tiny community of Cement, Oklahoma, trees and telephone poles are festooned with pink ribbons. People work tirelessly to collect signatures on petitions. The activity is in support of Billie Joe Powell, a 16-year-old girl charged with fatally shooting her father, who had allegedly abused her. Townspeople hope their efforts will help persuade the court to try the high school sophomore not as an adult but as a juvenile, so that she will receive more lenient treatment.

A few years ago, such sympathy would have been unheard of. Children who killed their parents were the ultimate pariahs. Regarded as evil or mentally ill "bad seeds," they virtually always earned the harshest judgment of the public and the courts. Says psychologist and attorney Charles Patrick Ewing of the State University of New York at Buffalo: "We take the commandment to 'honor thy father and thy mother' very seriously. The implication is that you're supposed to honor your parents even if they abuse you."

That attitude is slowly starting to change. Today youngsters who slay abusive parents are drawing more understanding from a public that has awakened to the national nightmare of child abuse. Last year an estimated 2.7 million youngsters were physically, mentally and sexually assaulted by their parents, according to the National Center for Prevention of Child Abuse. Despite the prevalence of abuse, parricide remains rare. It accounts for about 2% of all homicides, around 300 cases a year. Most of those involve teenagers who kill abusive parents. Though the numbers are small, these youngsters "open a window on our understanding of child abuse in a way that no one else can," says Los Angeles lawyer Paul Mones, whose practice is devoted to defending children accused of parricide. "They allow us to understand how abuse is incubated."

Sons are more likely than daughters to strike back violently. "Men by and large tend to act outwards and be more aggressive," says Ronald Ebert, senior forensic psychologist at McLean's Hospital in Belmont, Massachusetts. "Girls tend to internalize pain and blame themselves more." Abused girls often become bulimic or suicidal.

Typically, the child who kills a parent is from 16 to 18 years old, from a white middle-class family. Most have

above-average intelligence, although their schoolwork may be below average. They generally are well-adjusted in school and the community, though they tend to be isolated, without many friends. They commonly have had no prior run-in with the law.

Their target is most often the father -- usually a biological or stepparent rather than an adoptive or foster parent -- and the typical weapon is a gun kept in the home. These young people generally do not show any obvious sign of the mental disorders and self-destructive tendencies shared by children who strike out at strangers on the street or at nonabusive parents. In fact, dispatching their tormentor can be seen as an act of sanity, a last-resort effort at self-preservation. "They know what they're doing is wrong," says Dewey Cornell, a forensic psychologist at the University of Virginia. "But they are desperate and helpless, and they don't see alternatives."

Abuse is a mild term for the torture that parents inflict. When he went on trial for murder last August in Olympia, Washington, Israel Marquez, 17, recited a litany of abuse that began when he was seven years old. His stepfather, a deputy sheriff and martial-arts expert, liked to punch him in the chest and slap him on the head. When he went through a bed-wetting period between the ages of seven and 12, the stepfather beat him with a 2-in.-wide belt. After hearing the boy's tale, the jury found Marquez guilty of the reduced charge of voluntary manslaughter. He is expected to be released from prison in April.

Donna Marie Wisener's suffering at her father's hand started at age two and continued into her teens. To mark his displeasure, he threw oak logs at her; for amusement, he handcuffed her to a chair. Just as bad for the Tyler, Texas, girl was the sexual abuse. Her father would send her lewd Valentines -- "I would like your heart and I assume the rest of you will follow" read one message -- and give her "rubdowns." The agony culminated one evening when her father threw her against the wall, hitting her on the head over and over. He also beat her mother until she fell unconscious to the floor, then he threw Donna Marie out of the house. In despair, she returned and took a loaded revolver from her parents' nightstand. When her father came at her again, she shot him dead. Last February she was found not guilty of first-degree murder by reason of self-defense.

Mark Martone of Haverhill, Massachusetts, who killed his father, remembers abuse back to age five, when he told his dad he was scared of the dark. "Oh, Jesus Christ," said the parent in disgust. Then he led the terrified boy down to the cellar, handcuffed his arms over a rafter, turned off the light and shut the door. Mark dangled in silence for hours. "God forbid if I cried," he recalls. "I was just like a hanging Everlast bag, you know? Punch me, punch me." When Mark was nine, his father held the boy's hand over a red-hot burner as punishment for moving a book of matches on a bureau. And when he was 15, his dad, angered by a long-distance phone bill, stuck a gun in his son's mouth and "told me he was going to blow my brains out."

Most abused children suffer quietly. The lucky ones find other supportive adults who nurture them, typically a nonabusive parent, grandparent, teacher or coach. Some manage to cope by emotionally numbing themselves or by taking out their repressed anger on someone other than the abuser. Others find the torment intolerable. They may run away or try to commit suicide. Donna Marie Wisener once had a gun in her mouth when she was

discovered by her father, who told her, "Next time do it right."

Some seek outside help, but often to no avail. "I spent my whole childhood trying to get help, and none ever came," says Roy Rowe, 19, who last year was sentenced to four to 12 years for killing his stepfather. Neighbors in Vestal, New York, sometimes called the police when the screams grew too loud from the beatings -- with a paddle, a belt and a two-by-four -- that Roy's stepfather gave him, his younger sister and brother, and his mother. Teachers reported their suspicions of abuse; relatives tried to intervene. But each time, police officers and social workers left the children in the home. On his 17th birthday, Roy shot and killed his stepfather on their front porch as he came home from work.

What makes some children finally snap? "They don't pay as you go with regard to aggression," observes Detroit psychiatrist Emanuel Tanay. "You might think they're passive, but they're also explosive." Many parricides occur when the child is on the cusp of independence, about to break away from a parent's domination. Sometimes the killing is triggered by a desire to protect the other parent or siblings.

Often an escalation in the level of violence precedes the slaying. Mark Martone was 16 when he shot his father to death. "This was not a routine beating," he recalls. His father had slammed his head against a radiator, kicked him in the ribs and struck him on the skull with a hammer. As he sat in jail the night of the murder, Mark was still terrified. "Oh, God," he said to himself, "what am I doing here! Dad's going to kill me!" Mark was convicted of homicide as a juvenile but was sentenced to six months probation. Like others who have suffered the same ordeal, he remains torn by his immense relief, guilt, grief, even love. "It may sound sick, but I did love him," says Mark. "I still love him. I mean, he was my father."


Although a "battered-child-syndrome" defense is beginning to be recognized, mounting a legal case for these kids is difficult because the law does not, for the most part, recognize such killings as self-defense. Though some occur during an episode of brutal abuse, most happen when parents are in a vulnerable position: coming in the door, watching television, cooking dinner with their back turned, or sleeping. That may be the only time youngsters can overpower their abusers, but it makes the killing appear to be cold-blooded murder.

Advocates for abused youngsters contend that such seemingly premeditated acts can be self-defense. People who suffer abuse for a long time can become adept at sensing impending violence. "They are hypervigilant, sensitive to aggressive cues," explains Mones. "They know when someone is going to hurt them even though it may not be apparent to the outside observer." He calls for prosecutors to assign parricide cases to trained child-abuse investigators rather than to regular homicide detectives.

- Many mental-health experts now favor treatment rather than punishment for battered kids, who rarely are violent again. "These kids don't need to be locked up for our protection," observes Buffalo's Ewing. "Some may benefit in the sense that they've been able to atone and overcome some guilt. But beyond that, it's really Draconian."

The larger issue is how to prevent the abuse that leads to the killing. In addition to strengthening social-service agencies and enforcing laws that require reporting of suspected abuse, experts recommend school-based programs that teach parenting skills to would-be mothers and fathers. Schools could also educate children about the difference between acceptable and abusive punishment and tell them where to find help when parents get out of control. Many abused youngsters think that hitting and kicking are normal, and most cannot conceive of turning in their mothers and fathers. Besides saving desperate youngsters and their parents, educational programs could go a long way toward ensuring that the violence is not visited on the next generation. No one should forget that the majority of child batterers were once battered children themselves.

With reporting by Hannah Bloch/New York and Jeanne McDowell/Los Angeles

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PSYCHOLOGY TODAY

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Why Kids Kill Parents

Tragedy in the family: When kids murder their parents.

By: Kathleen M. Heide
Page 1 of 7

A father is gunned down... a mother is bludgeoned to death... a family of four--mother, father, and two small children--is butchered alive... by a son... a daughter... a son and daughter acting together.

While tabloid television has brought us closer to the everyday horrors of our society, nothing still shocks as much as a child killing a parent or step-parent. Such an act, though thought uncommon, is almost a daily event in the United States. Between 1977 and 1986, more than 300 parents were killed each year by their own children.

Don't think that these children fit any of the classic stereotypes--the kind we believe keeps murder at a comfortable remove. This is not another example of angry inner-city teenagers doing anything for drug money: An in-depth analysis of the FBI Supplementary Homicide Report for this period shows that, in the great majority of cases, the child who killed was a white male.

What kind of kid is capable of such an atrocity against a parent? What kind of a situation would lead to such a violent end? Looking beyond society's most alarming trend reveals society's most alarming undercurrent: These are neglected and abused children whose options are limited--children who honestly think they have no other way out.

Mean Teens

Almost invariably, the killers are adolescents. Why are the killers teenagers? Preadolescents, those under 11, typically do not understand the concept of death and have tremendous difficulty in accepting that their actions lead to an irreversible result. Adolescents are more likely to kill because the normal turbulence of adolescence runs up against constraints they perceive have been placed upon them in a setting of limited alternatives.

Unlike adults who kill their parents, teenagers become parricide offenders when conditions in the home are intolerable but their alternatives are limited. Unlike adults, kids cannot simply leave. The law has made it a crime for young people to run away. Juveniles who commit parricide usually do consider running away, but many do not know any place where they can seek refuge. Those who do run are generally picked up and returned home, or go back on their own: Surviving on the streets is hardly a realistic alternative for youths with meager financial resources, limited education, and few skills.

Even under the best of circumstances, adolescence is a stormy time. Children going through it need the support of parents, who must give them room to grow and help them confront tough issues. Those who commit parricide have parents who have not been available to help them. In fact, they are most often carrying adult responsibilities in their families. Indeed, they often look exemplary on the surface, taking care of themselves and often taking care of one or both parents as well as running the entire household.

Who Kills Their Parents?

There are three types of individuals who commit parricide. One is the severely abused child who is pushed beyond his or her limits. Another is the severely mentally ill child. And the third is the darling of the tabloids, the dangerously antisocial child.

By far, the severely abused child is the most frequently encountered type of offender. According to Paul Mones, a Los Angeles attorney who specializes in defending adolescent parricide offenders, more than 90 percent have been abused by their parents. In-depth portraits of such youths have frequently shown that they killed because they could no longer tolerate conditions at home. These children were psychologically abused by one or both parents and often suffered physical, sexual, and verbal abuse as well--and witnessed it given to others in the household. They did not typically have histories of severe mental illness or of serious and extensive delinquent behavior. They were not criminally sophisticated. For them, the killings represented an act of desperation--the only way out of a family situation they could no longer endure.

Only on occasion does a severely mentally ill child kill. These are children who have lost contact with reality. Their cases are often well documented with records of previous treatments that failed. Many of the cases are never tried; the killer is declared unfit to stand trial.

There are those few children who seem to kill without any remorse, yet whose parents seem to be loving and kind. The dangerously antisocial child is often the fodder of newspaper headlines. These juvenile offenders typically exhibit a conduct disorder--severely disruptive behavior that continues for over six months. These are the kids who kill their parents merely for some sort of instrumental, selfish end--never having to ask before borrowing the car again, for instance.

Portraits of Pain

I have conducted assessment interviews with approximately 75 adolescents charged with murder or attempted murder. Seven involved youths who killed parents. Of the seven, six were male; all were white. They ranged in age from 12 to 17. Two killed both parents. As a group, they killed six fathers, three mothers, and one brother. The murder weapon, in every case, was a gun, and it was readily available in the house. Six out of the seven were severely abused children; the seventh was diagnosed as having a paranoid disorder. Although seven may appear to be a small number of cases from which to draw conclusions, it is valuable for demonstrating the characteristics of kids who kill. Among the findings:

THEY AREN'T VIOLENT. Analysis revealed that the six adolescents who fit the profile of the severely abused child had approached life fairly passively until the homicide. Five thought of themselves as strong and in control of events. Their friends were typically nice kids, and they were relatively uninvolved in criminal behavior prior to the shootings.

THEY ARE ABUSED. Child maltreatment, particularly verbal and psychological abuse, was readily apparent in these six cases; severe psychological abuse was present in five. The one girl, in addition to being physically, verbally, and psychologically abused by her father, was also sexually abused and raped by him as well. Six youths had been emotionally and physically neglected by their parents. Two had virtually no supervision at all because both of their parents were alcoholics. None of the six had been protected from harm by their parents. At least one of the youths had been medically neglected. Contrary to popular wisdom, teenagers experience all types of abuse and neglect at higher rates than young children, according to the Second National Incidence Study of Child Abuse and Neglect.

THEIR PARENTS ARE MOST LIKELY SUBSTANCE ABUSERS. In all six cases there was alcoholism or heavy drinking in the home. There was strong evidence that each of the five fathers slain was an alcoholic. Three used drugs; one smoked marijuana and the other two used tranquilizers. One of the mothers murdered was also an alcoholic. Among the surviving spouses, chemical addiction was also common. Only one of them had reportedly

never been an abuser, though her husband was an alcoholic. Two of the surviving mothers had been addicted to Valium for years as a way of coping with an abusive husband.

THEY ARE ISOLATED. These families tend to be relatively isolated because of problems in the home. The six teenagers had fewer outlets than other youths because they were expected to assume responsibilities typically performed by parents, such as cooking, cleaning, and taking care of younger children. One, too young to be a licensed driver, even drove his brother to school every day. These children were isolated not merely by the burden of chores but by a burden of shame. They knew their family was not the Brady Bunch. And parents had often not been hospitable to friends they had brought home.

Over the course of the years, the youths had made attempts to get help--from teachers, relatives, or even the non-abusing adult in the house--but they were either ignored or unsuccessful. Increasingly, the children's goals centered on escaping the family either through running away or suicide. Over time they felt increasingly overwhelmed by the home environment, which continued to deteriorate and diminished whatever support had been available. Then, already stressed to the limit, their inability to cope eventually led them to lose control or to contemplate murder in response to some new overt or perceived threat.

THEY KILL ONLY WHEN THEY FEEL THERE IS NO ONE TO HELP THEM. Just prior to the murder, life had become increasingly intolerable. In the four cases where only the abusive father was killed, the mother was not living at home at the time. In one case, the common-law stepmother did the same thing the boy's mother had done several years before: She walked out. That was one month before the homicide. In a second case, the mother was chronically ill and had been hospitalized for several weeks at the time of the murder. In each of the two other cases, the mother had divorced her husband on the grounds of physical and psychological abuse, and then allowed the children to live with the father more than a thousand miles away. One boy killed his father within a year of being left alone with him; the girl in the other case killed her father within 16 months of his common-law wife's departure.

THEY "BLOCK OUT" THE MURDER, NOT REVEL IN IT. Five out of the six cases clearly suggested that the children were in a dissociative state at the time of the killing; there was an alteration in consciousness that left the memory of the murder not integrated into awareness. These youths do not deny the murder took place or that they were responsible for it, but they have gaps in their memory of the event, "blackouts," and a sense that events were somehow unreal or dream-like during the homicide or immediately afterward. In one case, the youth did not remember the homicide; in another, dissociation left only part of the memory of the shooting intact. He remembered the sequence this way: terror from a threat from his abusive father, flashback view of his father beating his mother, then standing over the father's bloody body. He has no memory at all of firing the shots that killed his father, although he assumed he did it.

THEY SEE NO OTHER CHOICE. The youths killed a parent or parents in response to a perception of being trapped. In two of the five cases in which there was severe physical abuse, both were reacting to a perceived threat of imminent death or serious physical injury. In the three others, the children were experiencing terror and horror even though death and physical injury were not imminent. Interestingly, in these cases, the victims were defenseless: two were shot as they lay sleeping, the third as he sat watching television, his back to his son.

THEY ARE SORRY FOR WHAT THEY DID. While many young felons brag about their acts, these youths seemed uncomfortable with having killed. They knew their behavior was wrong, but experienced conflict over its effects--repugnance at the act they felt driven to carry out, yet relief that the victim could no longer hurt them or others dear to them. Their conflict seemed to result from a sense of their own victimization. They do not see themselves as murderers or criminals.

The true killer in these cases is child mistreatment. The significant damage comes not only in human carnage but in the death of the human spirit that persistent abuse often carries out.

Few severely abused children actually kill their parents. But all are at a vastly increased risk of becoming delinquent or socially dependent than are children who are treated well by concerned parents or loving guardians. Most often, the destruction unleashed by child abuse does not manifest itself until a generation later. A disproportionate number of those who as adults kill others were themselves abused as children.

The undeniable realities and effects of child abuse are increasingly being recognized as a responsibility of everyone in the culture. Yet society has failed these children. It has failed to make a sufficient commitment to children. It has clearly failed to protect these children. And it has failed to foster good parenting.

What the World Needs Now

Parenting skills and support are areas that desperately need attention. Classes need to be made available to help parents cope with the stresses of raising children, particularly those with special needs. Research shows that increasing the knowledge of parents about home and child management, and enhancing the development of good communication skills, healthy emotional ties, and parent-child bonding helps prevent child abuse.

In addition to teaching adults and teenagers about child development and parenting skills, our nation's elementary, junior high, and high schools should develop courses that help children recognize abuse and neglect. Ideally, such courses would encourage children to take action if victimized or threatened, and teach them how; there would be a child advocate in the schools to help them. The programs should aim to foster the development of self-esteem and conflict resolution skills to aid youth in self-protection.

Almost 40 percent of schools in the U.S. do not offer prevention education. Programs restricted to helping children protect themselves from abuse are inadequate; children and adolescents must learn about all types of abuse. The earlier these behaviors are targeted, the earlier they can be stopped and any accompanying damage addressed therapeutically.

Abuse and neglect are not always recognized by their victims. When I discuss abuse and neglect in university classes, only then do some students become aware that they were abused or neglected as children. Some mothers of children who kill their fathers allowed their child to be mistreated because they never realized the fact they themselves had been victims.

And much of sexual abuse is covert. A child whose parent shares pornography with him/her senses that it is wrong, but assumes it must be okay because it's Mom or Dad whose doing it. The child resolves the resulting confusion by assuming that "what's wrong is me."

Most of all, we have to listen to our children. In a follow-up interview given four and half years after his conviction for murder, Scott Anders (see below) expressed bitterness when he recalled the number of teachers, neighbors, and relatives whom he told of the abuse--and who did nothing to help him. "Just because a kid is young, don't think he's stupid. At least listen to him. Then check into it."

Despite increased public attention to the fact of child mistreatment, many people are unclear about what to do when confronted with this problem. If you suspect a child is being abused or neglected, you should at least call the local or state agency that investigates child abuse and neglect cases. Reports in many states can be made anonymously; in any case, the caller's identity is kept confidential. If the agency determines that a child is in danger, he or she will be temporarily removed from the home and given a safe place to stay pending other arrangements.

Lastly, as a society we must look with compassion on adolescent parricide offender. These are not tough children, but after indictment they are usually dealt with harshly, even though their youth is considered a mitigating factor. They have been abused for years and feel a great deal of anger and pain. They need to understand the tragedy, appreciate that their actions were wrong, extreme measures that are not allowed as a way to solve problems, and that they could have chosen a nondestructive course of action. They need to work through their many losses--the loss of their childhood, the loss of a clear future, as well as the loss of a parent. They need help to realize that they did have positive feelings for their parent, and let the deeply buried feelings come to the surface so that they can be resolved. These are not conflicts that can be resolved by prison.

Theirs, after all, is the misfortune of being born before we could create a safe world for them.

CHARACTERISTICS OF KIDS WHO KILL

Although few studies have been done, Dr. Heide, drawing on earlier work by others and her own cases, delineates the common characteristics that emerged among 50 cases of adolescents who committed such a personal crime:

- Evidence of family violence
- Attempts to get help, which failed
- Attempts to run away or commit suicide
- Isolation from peers
- Increasingly intolerable family situation
- Children feel helpless to change the home situation
- Inability to cope with what is happening to them
- No criminal record
- A gun available in the home
- Alcoholism present in parents
- Amnesia reported after murder
- Victim's death perceived as a relief by all involved.

IF THOUGHTS COULD KILL

It is disturbing but true. Parricidal thoughts are far more common than any of us may have dreamed, as my colleague, Dr. Eldra Soloman, and I recently discovered in a survey I conducted of 40 adult women who had been sexually abused as children. The questionnaire, filled out anonymously, contained 200 items about abuse and neglect. Because many people do not recognize as abuse what happened to them at the hands of a parent, the questionnaire did not label any behavior as abuse or neglect; it merely described behaviors and asked whether they had occurred.

One question asked, prior to age 18, did you ever consider killing the abusive parent. Fully 50 percent--20 of the women--said yes, as an adolescent. Some reported they had even gone so far as to make plans.

We know that women are nowhere near as violent as men, yet fully 50 percent reported thoughts of murdering a parent. The interesting question is, would the incidence of thoughts be even higher among men?

These findings attest to the depth of feelings that abuse creates. It generates pain, fear, anger, and shame that many people spend a great deal of energy to contain over the course of their lives. Given the strength of the feelings abuse generates in its victims, the real question should be not why do kids kill their parents, but why don't more of them do it? Then we need to find out what insulates those who don't.

THE CASE OF SCOTT ANDERS

Scott Anders, a white boy from a lower-middle class neighborhood, was 15 when he killed his 36-year-old father. On the afternoon of the homicide, Scott confided to a friend that things at home had been 'building up." His father, Scott said, would come home 'real buzzed" on marijuana and cocaine. He would yell and threaten his son, even talk about killing him, and had done so for some time. Later that day, Mr. Anders smoked marijuana and screamed at the boy. Scott fled the house, telling his father he'd return, hoping he'd feel better. When Scott walked back through the front door, he saw that his father's 12-gauge shotgun was propped against the couch.

When I got back, I walked in the door and he looked at me and started yelling at me, cussing me and everything, and telling me he was going to beat my ass, and that was the last thing I remember. He was just getting ready to light another joint when I grabbed the gun. I shot him. He went back and rolled over and blood poured out of his mouth. He blinked his eyes. I shot him again. Then I freaked out."

Scott ran out of the house and found his good friend Kirk. He told Kirk that he was going to commit suicide because "it kinda took a part of me away when I shot my dad." Kirk took the gun away from Scott and accompanied him back to the house. As he tried to determine Mr. Anders's condition, Kirk recalls Scott "screaming and crying and everything." The two called the police and Scott gave a complete confession. The grand jury decided to prosecute Scott as an adult and obtained indictments for one count of first-degree murder and another for possession of a firearm.

Scott Anders was the only child born to Lily and Chester Anders. When Scott was three, Mrs. Anders left, taking with her a boy and a girl from a previous marriage. During the four years following his mother's departure, Scott shuffled between relatives four times. His father remarried, and Scott moved in; his stepmother, Mary, is a woman he remembers fondly. But the marriage was not for long, and soon she, too, left. Mr. Anders then married "Marytwo," and Scott moved with them to a neighborhood known as a haven for drug dealers.

Scott "never got into baseball or nothing" and was unable to go to the Scouts or do other fun things because he was "always usually busy around the house. Helpin' with chores." Chores? "I swept, mopped, cleaned the yard, washed the car, cleaned the rooms, cleaned the garage, mowed the lawn, and helped out the neighbors with their chores."

Mr. Anders was an explosive man who had a history of both physically and verbally abusing women. Scott remembers his father referring to women as "sluts. He beat the shit out of them. No reason. He'd wake up grumpy and go to bed grumpy. Make the coffee wrong, he'd throw it in your face. You spent too much money at the store, he'd... he'd show you not to do it anymore." Scott maintained that his father threatened Marytwo with a gun several times and beat her more than a hundred times.

Scott's own daily beatings happened from the time he could remember. Sometimes they had a "reason" (Marytwo would often not do her chores and blame it on Scott), sometimes not ("I'd fall down and he'd get mad"). His father's drinking played a large part in their severity. "When he was sober he would hit you, but when he was drinking ... that's when he really started swingin'."

Scott maintains that his father loved him even though he told him he was "no good." Marytwo would often treat him "like a dog. Get me a beer. Clean the porch. Chop the potatoes." She made Scott get rid of his big dog, a precious companion, because she preferred little dogs.

Weekends were unmitigated hell. On an average day his father would start drinking at one and not stop until he passed out. On Saturdays and Sundays, the father and Marytwo "partied" and went to bars, leaving Scott in the car. When he was younger, he was scared by being left alone. As he got older, he resented all the time it took away from him. Scott considered being beaten better than being left alone.

The most severe beating took place when Scott tried to run away but returned home when he became concerned that his parents would be worried. When he walked in, they were both asleep. Upon awaking, "Marytwo beat the shit out of me until one o'clock that morning. She was swingin' and punchin' and slappin' me and everything else." The following morning, Scott's father took his turn. "He beat the shit out of me, too. He hit me in the stomach, face, everywhere." The beating was so severe that Scott's father wouldn't let him go to school for a few days because the boy had "knots" on his head.

A month before the homicide, Marytwo "ran off" with one of Mr. Anders's male friends. Scott's father blamed his son for Marytwo's flight and told him, "Things are going to get a lot worse." With Marytwo gone, Scott was expected to do all the cooking and cleaning. Mr. Anders was unable to work because of a physical disability. No longer able to tolerate drink, the father turned increasingly to drugs. He also became a lot more violent. "My father started to tell me he was going to kill me."

The night of the homicide, Scott and his father argued about Scott's not being able to be in the house alone (he had to wait outside until his father returned). He kept "yelling and yelling and when I tried to run out he said, 'You better not go nowhere.' I was scared, and I just hauled ass. When I came back I saw the gun."

While there was no immediate threat, the parricide was the end of a long build-up. Scott remembers firing the second shot because he was afraid "what his father might do to him" after he fired the first.

Until the seventh grade, Scott had tried to get help by telling his friends and grandparents about the physical abuse. But "nobody wanted to get involved." Later, he told little even to his closest friends because he didn't want them to know the truth. Scott said he hated the term "child abuse" because he hated what it implied about his father.


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NANCY GRACE

16-Year-Old Girl on Trial for Allegedly Murdering Mom, Dad; Interview With Missing Woman's Aunt, CNNHN

Aired February 21, 2005 - 20:00:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

NANCY GRACE, HOST: Tonight, Sweet Sixteen and never been kissed. Well, that's certainly not the case in a Bellevue, Idaho, town. A 16-year-old girl on trial in adult court facing two consecutive life sentences -- that's one after the next -- for the murder of her mom and dad. Why? Prosecutors say she was boy-crazy, obsessed with an older teen, and her parents disapproved. They say, instead of sulking in her room with the door shut, she wracked a Winchester on her parents.

Good evening. I'm Nancy Grace. Thank you for being with us.

You know, most 16-year-olds worry about getting their driver's license or going to the prom that night. Not Sarah Johnson.

A case of puppy love turned to obsession. And when mother and father disapproved, 46-year-old Alan Johnson and his wife, 52-year-old Diane, were shot dead in the master bedroom.

Before we go live to Idaho for the Sarah Johnson case, let's go straight to Ft. Worth, Texas.

Breaking news tonight: A pregnant Ft. Worth mother and her 7-year-old boy went missing two days ago. Lisa Underwood didn't show up for a baby shower in her honor this Saturday afternoon. Well, police reported they found a pool of blood in her living room. No sign of either mother or son.

Underwood's blue Dodge Durango was discovered just a few hours ago, partially submerged in South Hickory Creek on the southwest edge of Denton, Texas. Here's the latest.

I'm waiting to go to a press right now. Before we can go there -- OK, here we go.

(BEGIN VIDEO CLIP)

LT. GENE JONES, POLICE OFFICER: And as the report stated, there was a significant amount of blood inside the home. But we're not prepared to make any definitive statements or draw any conclusions about what occurred inside the home. That's the purpose of this investigation.

(END VIDEO CLIP)

That was local police officer Lieutenant Gene Jones.

Right now, two very special guests are joining us. Lisa Underwood's aunt is with us speaking out tonight for the first time, obviously distraught over the disappearance of her niece. Also with us, victims' rights advocate and crime victim Marc Klaas. He's the father of Polly Klaas who went missing and was discovered murdered many years ago, tireless victims' rights advocate.

Let's go straight out to Marla Hess.

Ma'am, thank you for being with us. I know this is the first time you have spoken publicly. Tell me, what are they doing tonight, Miss Hess, to find your niece?



MARLA HESS, AUNT OF MISSING PREGNANT WOMAN: Thank you very much.

As you know, they found Lisa's vehicle, and they are doing everything possible. The Ft. Worth detectives and police department are working relentlessly. They have been working around the clock.

We have got people searching. There are teams of dogs, of course, helicopters in the area where her vehicle was found, cadets and police officers on horseback. They seem to be doing everything possible.

GRACE: Miss Hess, who would want to hurt a seven-month pregnant lady like Lisa?

HESS: Of course, we can't fathom that. We have no idea.

She was -- she is a very wonderful mother, successful businesswoman. We don't know of anybody, as far as customers and things of that nature, that -- and I have been asked that question -- that might have a reason to. She is seven-months pregnant. She's a single mother.

GRACE: What are police telling you, Miss Hess?

HESS: They are telling us everything they know. Of course, we were in the house. I was in the house when we found the blood. They are processing that now as we speak. They are not sure exactly whose it is.

But, obviously, there's a crime scene. Something's wrong. I know in my heart the two are together, obviously.

They have people of interest and that, you know, involves several people, but they really -- they do believe, of course, that it was an abduction, that there was at least one or more people involved.

GRACE: Marc Klaas, a very similar and disturbing thing happened to you when police knocked on your door to tell you Polly was missing. What should police be doing right now? Time is crucial. Tell me why.

MARC KLAAS, VICTIMS' RIGHTS ADVOCATE: Well, children that are kidnapped can disappear at the rate of mile a minute which is what make this kind of problematic because the Amber Alert was issued on a Saturday night. They found the car about 45 miles from the Oklahoma border, yet it wasn't expanded into the other states for another 24 hours.

So one certainly wishes that they had moved in that direction a lot more quickly. But other than that, it sounds like law enforcement is doing exactly what they should be doing. They will start the investigation looking inward, the people closest to Lisa. And then they will just expand it to the ultimate scenario which would be a stranger scenario, which I don't imagine anybody is really considering yet.

GRACE: And Marc, you being the father of little Polly, immediately you were the suspect. You insisted on a polygraph. You opened up your home, cars, your other vehicles, everything to search, in order for them to move on to the real suspect later convicted.

I heard Marla say, Marla Hess, Lisa's aunt, that there are people of interest. That's not unusual. It could be a boyfriend, an ex-husband, the neighbor. Those are the first people of interest. Police always check out those closest to the kidnapped victim. That doesn't necessarily mean they are involved in any way.

Marla Hess, how close were you to Lisa?

HESS: I was very close. I helped raise Lisa. She has lived with me off and on. We're very close.

GRACE: Would she have, under any circumstances, just taken off like this?

HESS: No, she would not. Her baby shower was scheduled. I talked with her Friday as I was en route to Dallas. I talked to her on the phone.

I offered to stay with her that night as opposed to her mother in Dallas. And I offered to bring food by. She told me it wasn't necessary. She had been sick, but she was feeling better. She knew it was more convenient for me to go to her mother's home as opposed to hers.

GRACE: Marla, what was unusual, if anything, about the home?

HESS: Neither one of them had their coats on, which would have been appropriate for that evening or that day. Jayden had no shoes on.

GRACE: Because his little favorite shoes were there.

HESS: Yes, they were. They were on the mantle.

GRACE: And you know, Marc Klaas, you cannot underestimate how important these clues are. Look, if somebody sees my cowboy boots and I'm not in them, go looking. Clues like that matter, Marc.

KLAAS: Well, in fact, if your cat is supposed to be in on Friday night and the cat's out on Friday night, that also is another clue that they would want to look at.

But let's be really clear, Nancy. This is a grown woman in her 30s. She's probably extremely upset. She is not going to go easily any place. And I think the public should be on the look-out for any kind of a disturbance in a vehicle or any woman that absolutely looks like she is not where she would be.

GRACE: Marc, let me ask my producer, Liz, but can you put that still up again? Everybody, take a look at this lady. Lisa Underwood, her boy just seven years old. Look at that. Look at that little face. They are out there somewhere tonight.

Marla, is there anything else that you can tell us tonight?

HESS: No, there is not. I appreciate so much everything that everyone's done. I just want anyone all over the United States -- because, again, we haven't found them, only the vehicle -- just not to discount anything they think or might have seen. Don't think it's a long shot. Just, please, call law enforcement, please.

GRACE: Marc Klaas, final thought?

KLAAS: My final thought would be for the family never to give up hope, to fully cooperate with law enforcement. Don't let the lawyers get involved.

And finally, congratulations, Nancy.

GRACE: Thank you, friend. Under other circumstances, I would be elated.

Marla Hess, thank you for speaking to us tonight.

Everyone, if you have any information regarding -- one more time, Elizabeth, if you can put up Lisa Underwood and her son, Jayden. There you go. Last seen, Ft. Worth, Texas, age 34. And remember, Lisa Underwood is seven-months pregnant. She is not traveling in her own car, a blue Dodge Durango. They were missing from the car when the car was found, an SUV.

Take a look. Any information, call your local 911 immediately regarding an Amber Alert. Marla Hess, Marc Klaas, thank you.

HESS: Thank you very much.

KLAAS: Thank you.

GRACE: Our prayers are with you, Miss Hess.

If you are a crime victim, if you know of an injustice or a case that needs some spotlight, call us, 1-888-GRACE-01, 888-472-2301. Or e-mail me, nancygrace@cnn.com. Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: She goes into the bedroom, presses the muzzle of the .264 weapon against her mother's head, pulls the trigger. Obviously shocked, she has to go around the foot of the bed. Her father hears the gun go off and starts to get out of the shower and is encountered by his 16-year-old daughter holding a rifle on him. And she pulls the trigger.

(END VIDEO CLIP)

GRACE: When I was 16 years old, my biggest worry was trying to drive the car down the middle of the street. This girl, Sarah Johnson, 16 years old, is facing double-murder charges. She is looking right down the wrong end of the barrel of two consecutive life sentences in a beautiful little town in Idaho.

Welcome back, everybody. I'm Nancy Grace. Thank you for being with us tonight.

Let's go straight out to Boise, Idaho. Standing by is this young girl's defense attorney, Bob Pangburn.

Bob, what's your defense?

BOB PANGBURN, DEFENSE ATTORNEY FOR SARAH JOHNSON: Our defense is that Sara simply didn't do it and the science will prove it.

GRACE: Well, OK, speaking of science, on her pink house robe, on your client's pink house robe, she admits it's hers, covered in her mother's blood. In the pocket, a latex glove linked to her through DNA and five .25 caliber bullets. Explain.

PANGBURN: Well, the simple answer is the robe is not covered with blood. And I know the prosecution has made the

argument that the shooter wore the robe. The fact is -- and anybody who has watched this trial at all so far -- has seen witness, after witness, after witness say, "This girl had no blood on her." No blood on her means she didn't shoot them.

GRACE: OK. So the intruder had to come in, put on your client's house robe, and go commit murder? Help me.

PANGBURN: The science will say -- our scientists are going to say that the shooter was not wearing the robe, that the robe may have been in the room. It may have been worn by another person.

Another thing that's become a clear fact of this case, two guns. Two guns, two killers.

GRACE: OK, well...

PANGBURN: The state has repeatedly -- repeatedly -- tried to show this as a young girl who was meticulous to the point of leaving fingerprints nowhere, and yet they say that she went over to the guesthouse, got one gun with the wrong bullets, came back, and left it on the freezer.

GRACE: Hold on. Hold on, Bob Pangburn.

Everybody, Bob is a veteran defense attorney in his jurisdiction. He knows his way around a courtroom. He's won a lot of cases.

But listen, buddy, you got the rock and the hard spot defense on this one. Take a listen to this people, if you're wondering what could the motivation be...

(BEGIN VIDEO CLIP)

AMBER MOSS, FORENSIC ANALYST, ORCHID CELLMARK: The DNA profile obtained from blood stain number four from the pink robe is a mixture of at least two individuals. The major DNA profile is consistent with Diane. Sarah Johnson is included as being a potential contributor to this mixture. Alan Johnson cannot be excluded as being a potential contributor to this mixture.

(END VIDEO CLIP)

GRACE: OK, I thought I was going to show you something about motivation. Instead, I showed you something about DNA.

But very quickly, Bob Pangburn, I'm going to give it another try. Take a listen to this as to motivation.

(AUDIO GAP)

... the crime scene -- Elizabeth, you're fired.

I'm trying to show you a sound bite from the trial that indicates that your client, Bob, was totally obsessed with a 19-year-old illegal alien that had been arrested for methamphetamine, OK?

Now, Bob, you and I know that the parents had threatened to turn him in on statutory rape charges that morning. Then this intruder comes. You know, I am going to throw this to Lisa Pinto.

Lisa, help me out.

LISA PINTO, FORMER PROSECUTOR: Well, you know this mystery man that Bob's creating for us, Nancy -- first of all, I would like to know where his name is and why none of his DNA, none of his blood is on the bathrobe, on the latex gloves, on the leather glove, the matching glove of which was in the defendant's bedroom.

And, you know, gee, maybe that explains why there were no fingerprints. Plus, you take the fact this is a girl who had been sulking all weekend, Nancy, about the fact that she had been split from the love of her life, that he was going to be deported, thrown in jail for having sex with her. And she sat in the guest room and stewed. And she had access to a weapon, to a gun, which this mystery man defendant that Bob tells us about, who I don't even know exists, I don't know where he got hold of the murder weapon, Nancy.

GRACE: Yes. Bob, if your person, Sarah Johnson, 16 years old, didn't do the deed, who do you think possible could have? I know that's not your job, Bob, but the jury is going to be wondering, if not her, who?

PANGBURN: Well, we have our supposition as to who. Obviously, you pointed to the person who has the greatest motive to do it. That's the boyfriend. And when you talk about DNA, this last week, the state...

GRACE: I thought he had an alibi. I thought he had an airtight alibi.

PANGBURN: Far from airtight. Last weekend, the state's own DNA people identified, or agreed with us, that there was stray DNA on the weapon.

GRACE: Well, does it match him?

PANGBURN: There are stray fingerprints...

GRACE: Does it match him?

PANGBURN: ... on the scope that was taken up.

GRACE: Bob, does it match him?

PANGBURN: It does not match him. It does not match him, but it certainly...

GRACE: Well, then how the heck is he your lead suspect if nothing matches him?

PINTO: His family says...

PANGBURN: You don't have to -- you could be the ramrod and have a couple other people helping you out. There's too many stray fingerprints and stray DNA here.

GRACE: Oh, it's a conspiracy. Oh, how I love a conspiracy.

Bob Pangburn, don't leave yet. I'm not through barbecuing you.

Everybody, we'll be right back. Bob Pangburn is representing Sarah Johnson, a 16-year-old girl. We may be laughing right now, but this girl is charged with the murder of her parents. She is looking at two consecutive life sentences.

Stay with us.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Did Sarah ever say anything about Bruno being involved in the murders?

MEGAN SOWERSBY, SARAH JOHNSON'S FRIEND: She had said that he couldn't be involved with the murder because he had an alibi and that the DNA tests that they took had came back negative.

UNIDENTIFIED MALE: And what day was this that she told you that?

SOWERSBY: On Tuesday.

UNIDENTIFIED MALE: So the day of the murders?

SOWERSBY: Yes.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GRACE: Welcome back, everybody. I'm Nancy Grace. Thank you for being with us tonight.

We are highlighting two cases. One, the case of Lisa Underwood, she and her son, Jayden, seven years old, went missing. They have been gone now two days. We'll show you their pictures later on in the show to see if maybe you have seen them and can help us.

Also, a case out of Idaho, a 16-year-old girl on trial for the murder of her own parents. Here in the studio with me, forensic psychologist Dr. Michael Nuccitelli.

Doctor, paracide, which is also known in the slang mode, parenticide, very rare.

DR. MICHAEL NUCCITELLI, PSYCHOLOGIST: Well, it's actually not that rare. I mean, if you...

GRACE: You know, when I was growing up, I didn't know a single soul that murdered their parents.

NUCCITELLI: Well, at that time...

GRACE: I beg your pardon.

NUCCITELLI: ... and obviously, you are very young, but, as I was saying...

GRACE: Woah.

NUCCITELLI: ... there's not a lot of official research. But what they are saying is, is that, from my research, is that approximately 2 percent of all homicides is paracide, which is the murder of two parents.

GRACE: OK. Reality check, 2 percent is not that much out of 100 percent.

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NUCCITELLI: Well, if you are the grandparents of Mr. Pittman, and you are the parents of this particular case, you would tend to look at it very differently.

GRACE: Yes. You know, I'm glad you mentioned Christopher Pittman. Remember Christopher Pittman, everybody? The 12-year-old that was tried in South Carolina two weeks ago. It was the Zoloff case. The kid had been taking Zoloff.

Elizabeth, do we have a still or any shots of Christopher Pittman? The deal with Christopher Pittman, Dr. Nuccitelli, I got where the defense was going. That kid was way whacked out on Zoloff.

But this girl -- no offense, Bob Pangburn -- she's the devil seed. Your parents don't like your boyfriend, shoot them? That's what the prosecution is saying.

NUCCITELLI: As a forensic psychologist, when you say the devil seed, you would be going on saying that she is either suffer from a severe bipolar disorder, borderline personality disorder, or even possibly the burgeoning of a young sociopath.

One of the things that I would like to ask Bob is that, has his defendant, has his client, ever been on any psychotropic medication?

GRACE: Oh, good question.

Has she, Bob?

NUCCITELLI: Do we have any psychiatric history? Any...

GRACE: Bob?

PANGBURN: Sarah has no psychiatric history whatsoever. She is a good kid. She is a volleyball player. She's playing basketball with her dad. She loved her dad. She loved her mom, too, but she was a daddy's girl.

GRACE: And she was a pretty good skeet shooter, too.

PANGBURN: That evidence is not going to come out because it didn't happen. That's another one of the concoctions of the state.

GRACE: OK, well, we're not in the courtroom. But is it true? Wasn't she a good skeet shooter?

PANGBURN: Absolutely not.

PINTO: Her father was a champion shot, Bob. Her father was clearly a champion shot. It wouldn't be a far stretch to imagine that she learned how to shoot she was such a daddy's girl. Can you explain how she got the bruise on her shoulder coincidentally the day that her parents were shot with a rifle? I mean, I don't know who else has that bruise.

GRACE: Wait a minute, wait a minute, wait a minute. I'm going to go to Chris Pixley.

Chris Pixley, now listen. You and I have gone round and round about a lot of cases. Everybody, Chris Pixley, lawyer out of Atlanta. What are you going to do about this DNA, Chris, if you were in Bob's shoes?

CHRIS PIXLEY, DEFENSE ATTORNEY: Yes, well, obviously, in this case, Nancy, you know as I well as I do, Bob has got to attack the science here. The DNA is a problem, but obviously there are questions about the crime scene itself. In particular, the fact that you do have this robe...

GRACE: Yes. Who put on that pink bathrobe? That's the big question for me tonight.

PIXLEY: Well, you know, take a look at the bathrobe. And I have no idea what Bob's arguments are going to be about the bathrobe. But when you read the reports, right now it says that the bathrobe has blood on the front and the back. If the shooter is supposedly Sarah Johnson, she is facing her victims as she pulls the trigger. How does blood get on the back of the robe? That raises the question of whether this crime scene does, in fact, have contamination. It's a difficult question -- difficult argument to make.

GRACE: I've got a scenario I'd like to run by you two veteran criminal defense attorneys. If you wanted to hide your body and your clothing from blood spatter, from a high powered Winchester, what about the theory that Sarah Johnson put her arms into the robe with the front covering her and the splatter came on the front?

She then took the robe off, stuck the latex glove, which has her DNA on it and the extra rounds, went and put them in the trash as she ran from the house from the killer.

What about that, Bob?

PANGBURN: The fact is, there's just not enough spatter on this robe to show that the shooter was wearing it. It's just not on there. There's no blood whatsoever on her. And there's not enough on the robe to indicate the robe was worn.

GRACE: OK, I know there's no blood on her.

But still, Lisa, aren't they in a heap of trouble in the sense that the real perpetrator would have to come in, put the girl's robe on, commit the shooting.

PINTO: Wear the gloves.

GRACE: Whoever had the robe on had it on this way, had it on backwards. They had to.

PINTO: Or they covered something -- had something else covering their body or the sheet covering...

GRACE: I am hearing in my ear, I have got to go to a quick break.

Everybody, as we go to break, and we'll all be right back, we here at NANCY GRACE want desperately to help solve unsolved homicides, find missing people. Tonight, as you know, Lisa Underwood and her little boy, Jayden, missing near Ft. Worth, Texas. Amber Alert issued for Lisa and Jayden Saturday. A few hours ago, her SUV, her Durango, found in a creek in Denton, Texas. If you have seen, heard anything that could help, please call your local police with the details.

(COMMERCIAL BREAK)

THOMAS ROBERTS, CNN ANCHOR: I'm Thomas Roberts with your "Headline Prime Newsbreak."

President Bush is on a five-day European trip to try and patch up relations with leaders who opposed the Iraq war. First off was a private dinner with French President Jacques Chirac. Both leaders come out of it saying the two nations have an excellent relationship.

Three people trapped by ten feet of mud just outside of Los Angeles are free. The mudslide that covered their town homes was caused by storms that are blamed for three other deaths.

Gas prices have dropped half a penny in the past two weeks. A Lundberg Survey puts the average for unleaded at a \$1.80. Prices should rise, though, before summer.

The Big Apple is making a big push for the 2012 Olympic Games. International Olympic Committee delegates are touring New York. The competition: Madrid, Moscow, London and Paris. A decision is expected to be made in July.

NANCY GRACE continues next. That's the latest for right now. I'm Thomas Roberts.

GRACE: Welcome back, everybody. I'm Nancy Grace. Thank you for being with us tonight.

We're talking about an Idaho case where a 16-year-old girl is facing double-murder charges. And listen, this is not some renegade. She didn't belong to a gang, didn't shoplift, didn't do drugs. She played on the school volleyball team, had pretty good grades, got along with her parents until, enter boyfriend, Bruno Santos.

And why weren't her parents happy? He's a 19-year-old high school drop-out, illegal alien, uh-oh, caught a methamphetamine charge. OK, that's why the parents were upset. That's why they tried to cut off the relationship. They threatened to charge him with statutory rape the morning they were killed.

PIXLEY: And going after 16-year-old girls. What a jerk.

GRACE: OK, I'm hearing a voice out of the blue. I think that was Bob Pangburn.

And you know, this guy is the perfect guy -- yes, we can hear you, Bob, the microphone. Hey, Bob, you are right. He's a jerk. So two plus two equals five. Let's blame him.

Let me guess, are you going to point the finger at Bruno Santos?

PANGBURN: Well, as you know, first of all, it wasn't me who said he was a jerk, though I certainly agree. And I agree that he is the person who had the greatest motive. He's the one who was facing prison time, not her. You know, this world is filled with 16-year-old girls with boyfriends their folks don't like. That doesn't make them killers. Sarah didn't do this.

PINTO: Bob, it's so interesting, because when your client right at the time of the incident, and there was a 911 call, where your client is already fingering the ex-maid as the perpetrator of these events. So maybe the two of you need to get your stories straight. She was convinced it was the housekeeper who was caught stealing, and that's what she told the neighbor...

(CROSSTALK)

GRACE: And caught stealing what? A pot of face cream.

Bob, that is not a motive for murder, I don't think. But, hey, you know what? Another thing though I think the jury is going to be concerned with is her lack of remorse.

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Elizabeth, can you play the manicurist?

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Were you present when she got her nails done?

LINDA VAVOLD, SARAH JOHNSON'S AUNT: Yes, I was.

UNIDENTIFIED MALE: Did you hear her say anything while she was getting her nails done?

L. VAVOLD: I overheard her tell Kenya (ph) that she just wanted to get on with her life.

(END VIDEO CLIP)

GRACE: Now, Bob, correct me if I'm wrong. But was that your client talking the day before the funeral? She was getting her nails done saying she wanted to get on with her life? I want to be wrong this time. Please correct me.

PANGBURN: Well, the voice that you heard there, the person that you saw...

GRACE: That was the aunt.

PANGBURN: That's the aunt.

GRACE: Right.

PANGBURN: The aunt -- this is another thing that's made this a horrifying case from a lot of perspectives. And that is that her family has wholly abandoned her right from the get go. From day one, her family has abandoned her.

GRACE: But, Bob, the question is, did she say that to the manicurist?

PANGBURN: I suspect she did say she wanted to get on with her life. And I think that wanting to get on with her life was a reasonable thing to be saying.

GRACE: That hurt. That hurt. I need a shrink. Help me here.

NUCCITELLI: Well, to support Bob right here, there's basically -- after there's a traumatic event...

GRACE: You, out. OK, you're leaving. Good-bye.

NUCCITELLI: OK, I'm sorry, it's...

GRACE: Take out the trash, Elizabeth.

(LAUGHTER)

GRACE: Her parents are dead, and she is getting her nails done. Did she get a pedicure, too, Bob? Did she?

NUCCITELLI: It's a term called psychic numbing. And it occurs whether an individual has committed a murder or they are suffering from a traumatic event.

And what happens is, is after the murder, whether they committed the murder or they are the victim -- or in this case, Bob believes she didn't commit the murder -- it is very possible that Sarah was going through a period of what's called psychic numbing.

One of the other events that we could talk about is at the evening of the funeral, what did she want to do? She wanted to go to a volleyball game. Well, not in every incident does it indicate that...

GRACE: You know what? I'm glad you jogged my memory, because I didn't remember that.

I didn't know she was such a devoted volleyball enthusiast, Bob. She wanted to go to a volleyball game -- did you say the evening of the funeral?

NUCCITELLI: I believe so.

GRACE: Is that true, Bob?

PANGBURN: What do you want her to -- you know, the question I have for everybody in this case is, what is appropriate grieving for a 16-year-old?

(CROSSTALK)

GRACE: I think you've actually got a point there. I think you do have a point there.

In conjunction with what Doctor Nuccitelli has told us, Chris Pixley, every time somebody catches a murder charge, the defense always says there's no playbook for grief. How many times have we heard it? The reality is, that is true.

But, Chris, please, a manicure the day before the funeral, stating, "I want to get on with my life?" What life? You are only 16. You don't even have a life.

PIXLEY: First of all, we have got to make sure that we have got the evidence right. I think that the manicure actually was the day before the murders and this testimony about wanting to get on with her life...

GRACE: No, I heard that, too, Chris. But it was the day before the funeral. There was confusion about that. It was the day before the funeral. She didn't want to chip her nail the next day.

PIXLEY: But the problem that I have, Nancy, you know, as a country we applaud people like Jackie Kennedy for stoicism when JFK's murdered. We applaud Nancy Reagan last year for her poise when Ronald Reagan is murdered. We have all of these examples of the stiff upper lip, but when somebody is accused of having murdered a loved one, we call it suspicious when they don't show enough grief.

And of course, now, after the fact, she has been crying in trial. Of course, her life's exposed. We're attacking her from all sides. The prosecution has done its case, and she now is talking about this relationship she had and how she was caught in the relationship. Now she's crying and we say too many tears.

You know, this is the kind of thing that amounts to nothing. It's not evidence of anything, Nancy.

PINTO: Chris, the former first ladies were not gloating over the insurance settlements that they were going to get at the demise of their husbands.

PIXLEY: Are you talking about the inmates? Are you talking -- are you talking about the jail house informants, Lisa?

PINTO: I am talking about the fact that she was going to buy her boyfriend a house.

PIXLEY: I mean, how many -- these guys are just a dime a dozen. Jail house informants are worthless, OK? And if prosecution is going to be putting in jail house informants to talk about how she was -- she's been giving confessions in jail, it's absolutely nonsense.

GRACE: Hey, guys, hold on just a moment. Chris, Chris, I'm switching gears.

I want to find out from Bob Pangburn, the defense attorney in this case -- Bob, apparently the parents said just before their murders to a family friend, "I've got to talk to you about Sarah. We're losing control. I don't know what is going on." Did that come before the jury?

PANGBURN: No, it didn't. And it's not true. The aunt comes in and testified this last week about the punishment that was meted out to Sarah. She was placed...

GRACE: OK, for some reason I can't hear Bob.

Very quickly, I wanted to speak to you before we go to break as we try to reconnect with Bob Pangburn about the staging, the staging of the scene. What was odd about the scene of the murders?

PINTO: Well, I think the fact that this mother, that she'd had constant fights with, that this woman was shot in the face. I mean, to me, you don't have to be a psychiatrist to see that that displays a lot of anger. And the fact that the father...

GRACE: The mom was asleep.

PINTO: And the mom was asleep with a sheet over her. And she just blew her away in cold blood, I mean, it's alleged by the prosecution.

And then you take the fact that there was a cartridge, a shell cartridge, in her bedroom which had the mother's DNA on it. I mean, all these things -- whoever this gangster was, Bob, must have done a pretty good job framing your client because it all points towards her.

GRACE: Another issue, Chris Pixley, before we go to break, is the forensics on -- this is what'll nail you. Forget about inappropriate behavior at the funeral the day before. What you said to the manicurist doesn't matter. You can explain that away as a good defense attorney, all right. Get a shrink like Nuccitelli, you are home free, OK?

Here's the rub. The evidence, the forensic evidence, doesn't match her story. Remember, Chris, she said, "I thought I heard a gunshot in a dream. Then I heard another one. I went to my mom and dad's bedroom door. I didn't open it. They didn't answer. I took off running."

But, brain matter and blood from the mom, from blow back from the shooting, was on her wall. That's how far the blood and physical matter blew at the time of the shooting.

See, that doesn't match with a closed door, Chris. That's the problem the defense has.

PIXLEY: Absolutely, Nancy. I think, you know, some of the most damning evidence right now in this case is the blood evidence. But there are also, obviously, some major questions about the fingerprint evidence, fingerprints of other people on the gun, fingerprints of other people on the shell casings and elsewhere that do not match any of the suspects.

GRACE: Chris...

PIXLEY: And that's, I think, one of the issues that will counter the DNA problem.

GRACE: Chris, somebody had to go in the house, put on this girl's pink bathrobe and commit hara-kiri.

Chris, did you do it? Did you go in the house, put on the pink -- it's ridiculous. Of course, you didn't. Who else would go in and put on this girl's bathrobe and commit murder?

PIXLEY: Where I would agree with you is I think that it becomes a very difficult argument for the defense to make that Bruno Santos is involved in this unless he has made the decision that he is going to sacrifice his girlfriend. But if somebody did, in fact, put on the bathrobe...

(CROSSTALK)

PIXLEY: ... and let gunshot residue get on to the bathrobe then, obviously, there's...

GRACE: You had me for a minute, Chris. But Bruno Santos, the boyfriend, came back voluntarily to testify in this case. Believe me, if it was him that did the deed, you are sure not going to catch him back in America sitting down in a courtroom.

Chris, I'll let you argue with me in a moment. All-star panel lined up. More on Lisa Underwood when we get back. Stay with us.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: In the days following the murders of Alan and Diane, what was Sarah's demeanor like?

L. VAVOLD: She seemed -- it seemed inappropriate, some of her behavior. When we would be discussing Diane and Alan, and someone would be upset, she would roll her eyes and act disgusted.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Has Sarah ever apologized to you for the events that had happened?

JAMES VAVOLD, SARAH JOHNSON'S UNCLE: Yes, when we were up at Richards (ph), I believe it was, after she came back from the hospital, she kept saying, you know, I'm sorry to put you guys through this, which I didn't understand. I mean, I said, "You know, you are not putting us through anything. We have no idea who killed them or anything like that."

UNIDENTIFIED MALE: But she said she was sorry she put you through this.

J. VAVOLD: Right.

(END VIDEO CLIP)

GRACE: Welcome back. I'm Nancy Grace. Thank you for being with us.

We're talking about Sarah Johnson, a 16-year-old girl on trial for double murder, the murder of her mother and father. According to prosecutors, she was crazy in love with a 19-year-old illegal immigrant. Parents disapproved, she shot them, according to them, the morning the parents were going to report the boyfriend, 19, for statutory rape.

Again to forensic psychologist Dr. Michael Nuccitelli. Doctor, take a listen to this.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: After Alan went and picked up Sarah that morning, did you observe how Sarah was acting?

L. VAVOLD: She was quiet and angry.

UNIDENTIFIED MALE: Was Sarah in trouble that weekend because of that?

L. VAVOLD: Yes. She had been grounded, and her car was going to be taken away.

UNIDENTIFIED MALE: OK.

(END VIDEO CLIP)

GRACE: She was grounded, and her car was going to be taken away. OK. I'm getting a picture. She had a car at age 16. Her parents had a guesthouse...

PIXLEY: Right.

GRACE: ... where she went and sulked all -- I guess it Labor Day weekend. Wouldn't come out, doing her homework. I think her homework may have been hatching up a plan, laying an egg of a murder plan out there in the guesthouse. I'm getting a picture of rich parents giving her a car. They've got a guesthouse, had everything she wanted, until Bruno Santos came along.

PIXLEY: If prosecution is correct and she did commit this murder because she is obsessed, well, from a psychological standpoint, this would be an obsession to the exponential most 15th degree. This would be an individual...

GRACE: Woah, woah, woah, woah, hold on. I'm a lawyer, not a mathematician. What?

PIXLEY: Well, the basic assumption would be is that she took the weekend and she made a conscientious decision that she was going to stop her parents...

GRACE: A conscious decision to stop the parents...

PIXLEY: ... from, you know, filing statutory rape charges. Because, in her mind, she was engaged to this young man. And she was going to live eternity with him. And no one, including her parents, were going to stop her.

GRACE: Lisa?

PINTO: You call that premeditation, Nancy, right? That's first-degree murder.

GRACE: We call it premeditation.

OK, I'm going to give bob Pangburn a chance to hop back in.

Bob, she was going to be grounded and her car taken away temporarily. You know, I have got to agree with you. That doesn't sound like motive for murder. Your problem is the DNA evidence. I'm still hung up on that pink housecoat, who would come in and put that on.

So, Bob, when you finally bring it to a jury, what's your theory? Is it going to be blaming the boyfriend?

PANGBURN: Our theory is quite simply no blood. It reminds me of the old hamburger chain ad. Where's the beef? Where's the blood? She has no blood on her.

GRACE: Well, wasn't her DNA on the latex gloves?

PANGBURN: And the state's own witness testified...

GRACE: Was that a yes?

PANGBURN: ... that he thought the glove had been worn before.

GRACE: Was that a yes? Her DNA was on the latex gloves?

PANGBURN: The girl's in her house.

GRACE: You've got a point there.

PANGBURN: She lives there.

GRACE: She lived there. But the latex glove with her DNA, why would a woman go around with a latex glove and a bloody house robe? Now, I'm getting a disconnect, Bob. Why the latex glove with her DNA on it in the bloody housecoat, thrown in the trash before cops could get there?

PANGBURN: Anybody who was going to plan this to the level that the state has got to show that she planned it, her fingerprints are nowhere. Why does she, after doing all this great planning, leave a gun, a second gun, in the garage, and then put the robe with the couple of gloves out in the trash where anybody could find them. It just doesn't match up. The state would have you believe some facts but disbelieve others. They want to believe the science on one hand and not on the other.

GRACE: Maybe she screwed up. Maybe she screwed up. She was in a little bit of a hurry. The neighbors say they heard blood-curdling screams, then a young girl's voice, and then she came to their door.

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Hey, Chris Pixley, question to you regarding the DNA. Any innocent explanation, latex gloves, her DNA in it, in the housecoat?

PIXLEY: Yes, well, you know, the question becomes, what kind of DNA are we talking about, Nancy? And of course, to find her DNA in a latex glove if she wasn't bleeding means that we are dealing with mitochondrial DNA, not nuclear DNA. That testing is fraught with problems. It is extremely sensitive. And if the evidence is damaged in any way, it can be inaccurate.

GRACE: OK, I get it. I get it. I get it. You are going to say the testing was wrong.

Here's my last question to you, Chris, before we go to break. There was staging at the scene. This girl loved to read mystery books, loved mystery books. That's a given. We know that.

And in the home at the murder scene, two knives had been pointed together, points together in place, I think, at the end of the bed. Another knife, no blood on it or nothing, laid out conspicuously on another bed. Staging, staging of a crime scene, Chris. Ringing a bell?

PIXLEY: Yes. It also sounds like the act of somebody who is extremely angry about what's gone on here, that's extremely angry leading up to this crime.

I don't know that somebody who has got, you know, these two days in the guesthouse to think about it is really going to premeditate a crime of this kind against their own parents. I think you made a great point in the beginning here.

The number of kids that actually kill their parents -- there's a reason we're talking about this case, Nancy. You know, if it's so open and shut, we wouldn't be talking about it. Murders occur everyday. The reason we're talking about it is kids don't kill their parents.

GRACE: Hold on. Lisa?

PINTO: Why did she have a dream? She tells her aunt that she had a dream that she saw her parents, her father with his chest blocked out, his mother with the face blocked out. And the father said, "You can't hurt me now." That is how I would...

(CROSSTALK)

PIXLEY: Yes, and the part you're cutting out of that conversation, apparently she said that she wanted to hug her father but she was afraid she would hurt him by hugging him. And he said, "Don't worry, dear, you can't hurt me now." So let's get the whole context of the conversation out there.

GRACE: Chris, beautifully put. Good luck in closing statements on this case.

Bob Pangburn, you have got your work cut out for you.

Everybody, when we come back, some of you will head to local news. For the rest of you, we'll be right here.

And, remember, I'm going to bring you live coverage of the Sarah Johnson trial tomorrow, 3:00 to 5:00 Eastern on Court TV's "CLOSING ARGUMENTS." Stay with us.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Did you indeed find lead antimony barium, which is confirmed gunshot residue, on that robe?

WILLIAM CHAPIN, EVIDENCE EXAMINER: Yes, we did.

UNIDENTIFIED MALE: Did you find...

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GRACE: While Sarah Johnson, 16 years old, told her manicurist she wanted to get on with her life, this is what a jury in Idaho saw. Sarah Johnson, facing two consecutive life sentences for the brutal shooting death of her parents shortly after they told her the romance was off with a 19-year-old illegal immigrant with a drug arrest.

Very quickly. Final thoughts, Bob?

PANGBURN: Well, we're going to start our defense, it looks like, a week from today. It will be based on solid science. And I think that people ought to pay attention and hang on to their boots, because we're going to give them a show.

GRACE: Bob, when you say you are going to give the jury a show, will Sarah Johnson be part of that show? Will your client take the stand?

PANGBURN: It's too early to say. She might.

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GRACE: Well, you are kicking off your defense case in a couple of days. When are you going to decide?

PANGBURN: Well, at this point, we haven't found a good reason to put her on. This case is based on science. We're going to start this case with doing a re-enactment of the shooting. Of course, we're going to have to use substitute items to do that, but we will show quite clearly where blood in this case went everywhere and would had to have gone all over the killer in this case.

GRACE: Bob, did your client ever take...

PANGBURN: No blood on Sarah.

GRACE: Did your client take a polygraph?

PANGBURN: She was never offered a polygraph.

GRACE: So, no?

PANGBURN: Correct.

GRACE: OK. Bob Pangburn is a veteran criminal defense attorney. I want to thank you for being with us tonight.

PANGBURN: Thank you.

GRACE: One of the reasons I have taken this case so seriously is the thought of parenticide, the thought of killing your parents, your mother and your father. Just want to introduce to you the reason I feel that way here.

On the set with me -- just took her glasses off -- my mom is here with me. And the thought -- when you think of this case and this girl facing life behind bars for the murder of her parents, the thought of putting a gun to the head of her parents is shocking to a jury. We'll wait for them to come up with the right answer.

As I go to break, very quickly, I want to give you a shot of Lisa Underwood one more time.

Elizabeth, can we put that up? Lisa Underwood, her son, Jayden Underwood. Please take a look.

I'm Nancy Grace signing off for tonight. Thanks for being with us, inviting us into your homes.

Coming up, the latest headlines from around the world. I'll see you here tomorrow night at 8 o'clock Eastern. Until then, good night, friend.

END

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NANCY GRACE

NANCY GRACE for February 23, 2005, CNNHN

Aired February 23, 2005- 20:00:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

NANCY GRACE, CNN HOST: Tonight, the jury is struck in the Michael Jackson case. The defense rests in the murder trial against "Baretta" star Robert Blake.

And 16-year-old Sarah Johnson's "slip of the tongue" could land her behind bars for life. The 16-year-old, of course, is on trial for the murder of her own parents.

Also tonight, facts are beginning to emerge about that 37-year-old charged with suffocating both Lisa Underwood, at seven-months pregnant, and her seven-year-old little boy, Jayden, to death. Now acquaintances are painting him as prone to drinking, addicted to sex affairs, and depressed to boot. A makeshift memorial to Lisa and Jayden continues to swell tonight with stuffed animals, notes, flowers, balloons. The rest of us on the outside looking in and wondering why.

Good evening everybody. I'm Nancy Grace. Thank you for being with us tonight.

A lot going down in the courthouse today. Before we go live to Santa Maria, California, and the Michael Jackson case, as well as taking you to Idaho and the Sarah Johnson trial -- remember the 16-year-old charged with the murder of her parents.

First, to the Lisa and Jayden Underwood case. When mom-to-be Lisa and her little boy went missing, we all hoped for the best and we feared the worst. Those fears confirmed when their bodies were found in a makeshift grave.

Well, tonight, Underwood's ex-boyfriend, Stephen Barbee, is behind bars in Fort Worth, Texas, on \$2 million bond. I want to show you...

(BEGIN VIDEO CLIP)

LT. GENE JONES, FORT WORTH POLICE DEPT.: Trust me. We were personally invested in this case. We were motivated by these two individuals. This is what drove us.

(END VIDEO CLIP)

GRACE: I want to show you a live shot. Our crew is there in Justin, Texas, not only where the bodies were found -- Man, this is a makeshift memorial that was put up. Can you imagine? That's the little bagel shop that Lisa Underwood owned. It was named "Boopa." And I looked into that and found out that was her nickname for her little boy.

That first live shot we just showed you was where the bodies were found --- can you imagine that -- near a swamping area, near a motocross speedway. That's where those two people were laid to rest, a mother and son.

Let's go live to Dallas. Standing by is CNN's Ed Lavandera. From San Francisco, criminal profiler and former FBI agent, Candice Delong.

First to you, Ed. Ed, thank you for being with us tonight. Ed, what can you tell me about this guy, Stephen Barbee?

ED LAVANDERA, CNN CORRESPONDENT: Well, you know, Stephen Barbee -- we have been listening to the reports coming in the last 24 hours about him. His parents live in a small town north of the Fort Worth area. They haven't spoken. The woman he was married to hasn't spoken publicly as well.

So what we're hearing has been reports from people who have known him over the years. And the reports have ranged from what you mentioned add the top, you know, people who are closer to him saying that they're surprised that he's accused of this. But we've heard from people who say, in the last couple of years, there has seemed to be an angrier edge to Stephen Barbee that has kind of grown in the last couple of years.

GRACE: Hey, Ed. Ed, how long was this guy married?

LAVANDERA: He had just been recently remarried in December.

GRACE: So he married somebody else while this girl was pregnant?

LAVANDERA: Yes. He was married in December of last year. He had also been married -- I think he was divorced in 2003. His first marriage lasted seven years. And those were reports that have come out in the last day or so, as well.

GRACE: So this is the second marriage.

You know, the reason I'm asking, Candice Delong, is because you and I were talking about motive, not that there is ever a good motive for murder. Candace, I once prosecuted a murder over \$10, all right? So there's never a good motive for murder.

But in this case, you've got a newlywed with a pregnant girlfriend. That doesn't look good walking down the aisle, the wife on one side, the pregnant girlfriend on the other. Motive?

CANDICE DELONG, FBI CRIMINAL PROFILER: Right. Well, one thing that always occurs to me in cases like this, which are, I'm afraid, becoming all too common is, what was of course going on in his mind? What was the motive? Why did this happen now?

I'm wondering, did the wife know that he had a pregnant former girlfriend about to deliver? I'd like to know, when did he find out she, former girlfriend, was pregnant with his child and soon to be delivering?

GRACE: Well, Candace, Candace, the woman's seven months. I think he would probably notice.

Hey, Ed Lavandera, that's a good question. Did the wife know? It sounds to me you're saying this is a small town. If it's anything like where I come from, everybody knows everything.

LAVANDERA: Well, I don't think the people of Fort Worth would think their town's very small. But, at that point, whether or not he knew, didn't know, we have nothing to be able to kind of help -- you know, kind of get us through that at this point.

GRACE: What about Ron Dodd?

LAVANDERA: Well, you know, I'm glad you bring him up. Because he's actually the one who has been getting the most of the attention today. In fact, in the last half hour, we have learned that he has actually been arrested, picked up on a parole violation, we've been told by Fort Worth police.

GRACE: Hey, can I tell you? Birds of a feather, Ed. Say I'm crazy, but you have got this Ron Dodd -- everybody, who Ed is telling us about is Ron Dodd.

Dusty, let's show him this. I've got this arrest warrant here that outlines Ron Dodd's alleged involvement. This is a sworn affidavit signed by police.

What part did he play that we know of right now, Ed?

LAVANDERA: Well, this is the part that is rather fascinating. He was interviewed in Tyler Monday morning. But in this affidavit that you're showing there, it lays out, according to the police, that on Friday night going into Saturday morning that Stephen Barbee called Ron Dodd several times -- he's a business partner -- and asked him to pick him up in the areas where the bodies were found and Lisa Underwood's car was found.

And at one point in the affidavit it also goes on to say that when he picked him up the last time, because his car -- he says in the affidavit -- that his car had run out of gas, that when he opened up the tail gate to the

car -- Barbee did -- that Dodd had seen the bodies of Lisa and Jayden in the back of the car. So the questions being answered today...

GRACE: And he didn't think to punch 911?

LAVANDERA: And exactly. That's what has generated all of the buzz around Ron Dodd today is that, since he knew that, according to the affidavit, would have known it Friday and Saturday morning and never called authorities.

GRACE: Candice, I just can't believe it. Somebody opens a trunk of a car and there's a dead pregnant lady and a dead little boy. In the affidavit it says the little boy is four feet tall. And this guy goes, "Sure, I'll get you some gas?"

DELONG: Right. And apparently he also said, if my memory serves me correctly, he didn't notify authorities because he didn't want to get involved. Well now we find out he has an arrest record for himself. He's been violated on his parole. I'll bet there's a real good reason he didn't want to notify authorities. And we're probably about to find out in the next day or so.

GRACE: Hey, what was the parole violation, Ed Lavandera?

LAVANDERA: We asked that question. They won't say or they're not ready to say just yet. I asked if it was in connection to this particular crime or if it was in connection to another crime. And Fort Worth police saying they're just not ready to specify...

(CROSSTALK)

GRACE: Hold, Ed.

Ed, march right back down there, because arrest and convictions are public records. They don't have a right to withhold that. Believe you me, Ed. If I had a little shoplifting or a drug arrest in my background, nobody has to release that. That is public record.

So, Ed, before you go, where do we stand now? What happens next? Do you think Dodd is going to be charged?

LAVANDERA: Well, you know, that is what everyone has been asking today. They say, you know, here's a guy -- at the very least, what people are asking Fort Worth police is, if this is a man who, according to this affidavit had knowledge that this had happened, at the very least, people are wondering if he's at least guilty of the very least of not reporting this and then somehow that would be an issue.

Now, there are a lot of other people who are closer to the family. And of course, at this point, this is speculation among people...

(CROSSTALK)

GRACE: Yes, yes.

LAVANDERA: ... and that sort of thing. But they're wondering if -- not a lot of people actually believe that -- I talked to yesterday out at the home that believed that Barbee acted alone. Now, that is...

GRACE: Yes.

LAVANDERA: ... very early on to say that from my standpoint. But you can understand where the questions are headed at this point. And I think it's a strong indicated that the Fort Worth police, they have been wanting to talk to Ron Dodd all day today. And since this has happened late today, this just -- we're finding out about this about a half an hour ago, there are strong...

(CROSSTALK)

GRACE: You can put some money on this, Ed. You can put some money on this: They've got two ways to go. They can either try to charge him and leverage that to get testimony, in case that confession is suppressed, they need something else other than the defendant's confession. Or they can secure his

statement now and use him as a witness at trial.

Either way, I'm sure the police are anxious to speak to him.

Ed Lavandera is with us, CNN reporter. Also with me, and who will stay with me, Candace Delong, FBI profiler.

As we go to break, I'm not quite ready to let it go. We're going to come back with Jackson and Sarah Johnson, but take a look at this. This is where Lisa Underwood and her little boy -- can you imagine -- seven years old, left out here in a soggy, shallow grave. Friends and family made this makeshift memorial. That's what's left of Lisa tonight.

(BEGIN VIDEO CLIP)

LAVANDERA: At the evening vigil, a spokesperson for the family couldn't finish her remarks without breaking down.

DEBBIE LINDLEY, FAMILY SPOKESWOMAN: It just really means a lot to us that you guys came out tonight to show your support for them. If we could just have a moment of silence in their honor, I'd appreciate it.

LAVANDERA: Sometimes there are no words. And on this night, the candles and the silence spoke volumes.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

MICHAEL JACKSON, SINGER ACCUSED OF MOLESTATION: In the last few weeks, a large amount of ugly, malicious information has been released into the media about me. Apparently, this information was leaked through transcripts in a grand jury proceeding where neither my lawyers nor I ever appeared. The information is disgusting and false.

(END VIDEO CLIP)

GRACE: Well, believe it or not, another miracle. It took just under seven court days for the Michael Jackson jury to be struck and seated. It all went down today. That's right. They are in the box, the jury box.

And tonight, from Santa Maria, California, Court TV's executive investigative editor -- wow, that's a mouthful -- I just call her friend, Diane Dimond.

Also with me...

DIANE DIMOND, COURT TV EXECUTIVE INVESTIGATIVE EDITOR: Hi, Nancy.

GRACE: Hi, friend.

Also with me, defense attorney Anne Bremner. She's a Seattle lawyer. Also there in Santa Maria, my sparring buddy, Geoffrey Fieger from Michigan. Also with me in New York, prosecutor Lisa Pinto. And boy, do we need a shrink, psychologist Caryn Stark.

You know, speaking of a shrink, I hardly know where to start when it comes to Michael Jackson. But let's just go to the source, Diane Dimond.

Tell me, is it true? Do we have a jury? I thought, you know, this is California. It would take at least six months to strike a jury.

DIMOND: Well, we thought it would take about a month, Nancy, but it didn't. By noon today, we had a panel of eight women, four men. Three are Hispanic. There's one Asian woman. By the way, the Asian woman is married to a local television reporter from KCOY. He had been covering this case, but I talked to his news

director today, and he said that, in interest of fair play, they have taken him off that assignment.

So, anyway, eight women, four men.

GRACE: Eight women, four men. And question: How close are we to getting the alternates?

DIMOND: Well, fairly close. They think that they'll be done picking the eight alternates tomorrow. They got through -- Tom Mesereau got through all of the (UNINTELLIGIBLE) today, and Ron Zonen, the assistant D.A., got through about half of it.

So we'll start with that tomorrow. And then, don't forget, we have got a whole pile of motions to go through. That'll probably be on Friday.

GRACE: Hey, Fieger, you know, I always wanted at least two to four alternates just to be safe, but after Peterson, I'm okay with eight alternates. What do you think? Are they overdoing it or not?

GEOFFREY FIEGER, DEFENSE ATTORNEY: No. Because of the length of this trial, you have got to hope that, if you're not successful in the first 12 that are in the box, that there's going to be some replacements and who you've selected as the alternative is going to be good for you. And I think that's where Mesereau can do some good for his client. Because this jury scares me, at least on paper, as a defense attorney.

GRACE: Why? Oh, as a defense lawyer. OK, I understand. I love this jury.

FIEGER: To begin with, yes, exactly. The ex-prosecutors are from Santa Barbara. They're primarily white, and don't give me this stuff about Hispanic. They're primarily white. They're very well-educated. They're old. They have got military in their background. They believe in authority.

GRACE: In this kind of case, when you have a superstar like Jackson, I really don't think race matters. I swear, I do not think race matters in this case.

FIEGER: No, of course. You have got a black man who looks like a white woman. So, you're right. Race, in that sense, doesn't matter. But I'll tell you where it does matter. Blacks are more suspicious of authority. They understand that people can be wrongfully charged. They accept that you're innocent until proven guilty.

Whites by and large believe you did something, Nancy, in order to get charged. You must have done something. And therefore, you have to prove your innocence. Take it from a defense attorney. That's prevailing in the United States among whites.

GRACE: Hey, Diane Dimond, we just showed a shot of Michael Jackson. And in that shot, I think it was the day that he and his whole entourage showed up in all white. I say -- and not that this is evidence -- but I say Jackson has got to lose the fake military medallions. What is that around his waist?

You know, he's always got kind of a family crest. Yesterday, I think it was a deer, a deer sewn onto...

DIANE DIMOND: Yes, he had deer antlers on. He had a deer antler brooch. And he wanted to be sure that the court artist got it right. So he, you know, kind of showed it to him.

You know, he's not wearing white anymore, Nancy. He's wearing black. It's more sedate, but he has got these beautiful vests that he wears. Today, he had a red shirt and a colorful red vest, and this like watch fob, sort of, waist chain that you're talking about. And it's got -- about this big. They're little miniature royal crowns, you know? And they drape down. It's a beautiful piece of jewelry. And maybe he thinks it's his good-luck charm, because he's wearing it everyday now.

GRACE: OK, Geoff, not to beat a dead horse or anything, but if this were your client, I've got a feeling you would wrestle him to the ground and tear off the watch fob, and the crest, and the military paraphernalia before you let him...

FIEGER: I'd dress him like an ordinary person to the extent that he could. I'd wash off the make-up.

But let me tell you this: Michael Jackson has never, ever been told no. And that's the problem. And I doubt that Mesereau really controls Michael Jackson. And that's going to be a problem throughout this trial, a big

problem.

GRACE: You know, Diane Dimond, you and I were talking earlier today. I don't care, man, woman, black, white. All I care about is, do they have a job? I want to see that jury's resume. I don't want some slacker that doesn't have to go to work in the morning, that takes a government check. Forget about it. I want somebody that shows up and punches the clock. Please tell me the 12 in the box, the jurors, have jobs.

DIMOND: They do. And the ones who didn't have jobs got off on hardships, because a lot of them said, "Hey, I'm going for job interviews, your honor. Please let me go." And he did.

Let me just tell you real quickly. The age span here is from 20 -- that's the youngest. It's a Hispanic man who is a cashier. And the oldest is a 79-year-old woman who is a widow, really, really interested in her community. She has a grandson who is a registered sexual deviant. But here's what they do for a living. I'll tell you. A physical therapist in an old age home, she's a widow, retired, a former math teacher. Didn't you used to be a former math teacher?

GRACE: No, English teacher.

DIMOND: Weren't you something like that? OK. Here's one that is a horse trainer...

(CROSSTALK)

GRACE: I carry a calculator at all times.

DIMOND: This one is a horse trainer...

GRACE: Hey, Diane, Diane...

DIMOND: ... and she donates lessons to abused children.

GRACE: That's what I was going to ask you about. Because, in this case, the alleged victim of sexual abuse, here is a woman that donates her time as a horse trainer for child molestation victims.

Diane Dimond is with me right there at the courtroom, been in the courtroom all day long. And we're going to bring in the rest of the panel.

But quickly, as we go to break tonight, "Trial Tracking." "Baretta" star Robert Blake, hey, tell it to the parrot. The defense rests its case today -- yes, I blinked my eyes. It's over. And they never called Blake to the stand. Instead, the jury got to hear an old "20/20" Barbara Walters interview with Blake where he talks about his little girl, Rosie, and her mom, the murder victim, Bonny Lee Bakley. Bakley, shot to death in Blake's car outside Vitello's Restaurant in May 2001.

More on Jackson when we come back.

(BEGIN VIDEO CLIP)

JACKSON: Years ago, I allowed a family to visit and spend some time at Neverland. Neverland is my home. I allowed this family into my home because they told me their son was ill with cancer and needed my help.

Through the years, I have helped thousands of children who were ill or in distress. These events have caused a nightmare for my family, my children, and me. I never intend to place myself in so vulnerable a position ever again.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GRACE: This is a shot of Michael Jackson is a much more subdued courtroom outfit, coming into the courthouse. There is his lawyer on the right with the silver hair, Mesereau. That's his entourage, the always-trusty umbrella, be it rain or shine. Jackson headed to court.

Welcome back, everybody. Quickly to Anne Bremner, Seattle lawyer there at the courthouse.

How was he in front of the jury?

ANNE BREMNER, DEFENSE ATTORNEY: I'm sorry, Nancy. What? A car just went by.

GRACE: OK, dear. How was he in front of the injury?

BREMNER: I just -- how long is it going to take them to pick the jury?

GRACE: No, sweetie. How was Michael Jackson's demeanor in front of the jury?

BREMNER: I've got it now. I got it now. The fans have already been out here, but the traffic's kind of loud.

You know, his demeanor was good. And, you know, he's dignified. I think he's taking it seriously.

And, you know, one thing that's really kind of striking about him, when the jurors talk about their children, Nancy, he seems to smile in a way that is kind of indulgent, like he loves children in the right way and not the wrong way. And he's not -- he smiles at the appropriate times. But he's also serious and taking it seriously. So I think, you know, he's getting an A.

GRACE: Well, hold on. Let me go back to Diane Dimond from Court TV.

Diane, Anne says he's taking it seriously. I'm sure he is. Nobody wants to go to the can for 30 years. But didn't he try to -- his people tried to barter something in court today?

DIMOND: Yes, they did. And I'll tell you, he reacts when there was an African-American woman answering questions. And he liked what he was hearing. And he was nodding his head. And then she got tossed, and he put his head in his hands like this.

Yes, the barter thing had to do with the court reporter -- the court artist, rather. And he sent his attorney, Brian Oxman, over. I was sitting right next to Bill Robles, the artist. And Brian Oxman leaned over and he said, "Mr. Jackson would like to sign some of your artwork. And I've been authorized to ask you about cost, unless we can do a little trade."

And I thought to myself, a, that's sort of inappropriate. You know, take him in the back and ask him. But the jurors were sitting one row behind me. I heard it. They likely heard it.

GRACE: He was going to trade his autograph for a court picture, right?

DIMOND: Or two or three. That's what it sure sounded like to me. That's what Bill Robles said he thought it was.

GRACE: Hey, Diane, I'm hearing in my ear from Elizabeth, we have got 30 seconds. When is opening statement?

DIMOND: Monday morning. I'm going to bet you it is Monday morning. Not official yet, but my sources are telling me Monday.

GRACE: And I know who will be on row one, Diane Dimond. Please join us again, friend.

DIMOND: You bet.

GRACE: Everyone else is staying with us. Diane is headed away. She's been at the courthouse since this morning at 7:00 a.m.

We here at NANCY GRACE want desperately to help solve unsolved homicides, find missing people.

Tonight, take a look at this 12-year-old girl. What a cutie. Samantha Detzler. She was last seen around 10:00 p.m. Saturday, leaving her grandmother's in Lansing, Michigan, blue jeans, blue shirt and a gray hood sweatshirt. If you have any info, please call 1-800-THE-LOST.

(COMMERCIAL BREAK)

SOPHIA CHOI, CNN ANCHOR: Hello, I'm Sophia Choi. Here is your "Headline Prime News Break."

President Bush will wrap up his European trip by meeting with Russian President Vladimir Putin in Slovakia tomorrow. Bush says, "It seems like Russia is retreating from democracy." He's concerned about Russia's recent moves against press and religious freedom.

For the first time, Kobe Bryant will answer questions under oath from lawyers of the woman accusing him of rape. Friday, Bryant will meet with them for seven hours in Los Angeles. The woman is seeking an undisclosed sum in her federal lawsuit for alleged mental injuries. Bryant has apologized, but he insists the sex was consensual.

And President Bush is trying to sweeten New York's bid for the 2012 Olympics. He's doing it by promising that the government will help pay for security. The security costs for the Athens games was more than \$1 billion.

And that's the news for now. Sophia Choi, now back to NANCY GRACE.

(BEGIN VIDEO CLIP)

KASSI WEBBER, SARAH JOHNSON'S HIGH SCHOOL FRIEND: She didn't like her mother very much.

UNIDENTIFIED MALE: OK. In fact, did you ever tell the police in stronger terms what Sarah might have said?

WEBBER: She thought her mom was a bitch.

(END VIDEO CLIP)

GRACE: Now with us Boise, Idaho, Sarah Johnson's defense attorney, Bob Pangburn.

Bob, watched you in court today. Where do you plan to go with your defense?

BOB PANGBURN, SARAH JOHNSON'S DEFENSE ATTORNEY: Well, as I think we talked the other night, our defense is that simply, from a scientific perspective, Sarah could not have committed either of these crimes.

GRACE: Because?

PANGBURN: Well, because the person who did the shooting would have been covered in blood. And witness, after witness, after witness has said that Sarah had absolutely no blood of any kind on her.

GRACE: Now, Geoff Fieger, I want to talk to you about that pink bathrobe, very quickly, before I move on to what happened in court today.

Geoff...

FIEGER: Yes.

GRACE: ... the girl's pink bathrobe, covered in blood, found in the trash can out front. In the pocket, Geoff, a leather glove, a latex glove with her DNA on it, and five .25 caliber bullets. Does it seem reasonable to you that the shooter would put that on, shoot, take it off, and throw it in the trash, as they ran out of the house?

FIEGER: Well, the other matching glove was found in Sarah's bedroom. Remember, this is...

GRACE: I hate when that happens. It's just like O.J., Geoff.

FIEGER: Yes, this is circumstantial evidence. It's not direct evidence showing Sarah committed the crime. But obviously, jurors are allowed to conclude under those circumstances that this may be the person who committed the crime.

Now, I don't believe the bathrobe is necessarily covered with blood, but it does have blood on it. And there

is rubber glove and there is a leather glove, and there is ammunition. And under those circumstances the jury will be allowed to conclude, if they so find, that that points the finger at Sarah. And that's an unfortunate circumstance for the defense.

GRACE: Geoff, when did you start talking like a judge?

(LAUGHTER)

GRACE: That scared me. You're not judicial.

FIEGER: Oh, yes, I am. I'm judicious when I need to be.

GRACE: OK, when it's not your case, then you get real judicial.

FIEGER: That's right.

GRACE: When it's your case, just mean. Hold on...

FIEGER: When I want to appear more objective with you, Nancy, and more reasonable against your sometimes unreasonableness.

GRACE: There you go. That's the Geoff Fieger I know. OK.

Lisa Pinto, former prosecutor, is with me. Let's talk about today. Her demeanor in court hasn't changed much. As a matter of fact, take a listen -- do you have a sports car? I didn't even know what one of these was.

LISA PINTO, FORMER PROSECUTOR: Not a Viper.

GRACE: We're talking about a Viper. Listen to this.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Did she ever talk to you about the financial assets of the estate and how they might be split up or anything?

KASSI WEBBER, SARAH JOHNSON'S HIGH SCHOOL FRIEND: Not about her house or anything, but that her mom had a car that had been sold and she wasn't very happy about that. She didn't feel that was very fair. But...

UNIDENTIFIED MALE: Do you recall what kind of car she said that her mother had?

WEBBER: I think she told me it was a Viper.

UNIDENTIFIED MALE: OK. Were you aware that it was actually a Honda?

WEBBER: No.

(END VIDEO CLIP)

GRACE: A Viper.

PINTO: There she is, lying again, Nancy. You know, whenever she talks to these girls, she never tells them the truth. She lies about what her parents does. She lies about whether she's engaged and when she got engaged. Now here's she's lying about the type of car it was. And, you know, these girls...

GRACE: It's amazing. It's just like Peterson. It doesn't even matter. He just lies.

PINTO: It's a fantasy world that she lives in. And you can understand, not to borrow the shrink's word, but a sociopath makes up these fantasy worlds where, you know, everything was copasetic.

And I think what's particularly damning today was witness after witness from the jail saying she couldn't

have cared less about her parents. She called her mother a bitch. You know, we talk about how people grieve. But no matter how you grieve, you don't call your dead mother a bitch...

(CROSSTALK)

GRACE: I'm taking the soap to your mouth, young lady.

PINTO: Sorry.

GRACE: Speaking about being pampered, here are Sarah Johnson's plans for when she gets out of jail. Take a listen.

(BEGIN VIDEO CLIP)

MALINDA GONZALEZ, SARAH JOHNSON'S JAILMATE: She said that she did not want to spend her 17th birthday in jail and when she gets out, she's going to get completely pampered, have massages and stuff like that.

(END VIDEO CLIP)

GRACE: Massages, pedicures, manicures.

OK, Caryn Stark, we lawyers can't do this justice. Shrink me.

CARYN STARK, PSYCHOLOGIST: Typical antisocial personality, Nancy. Somebody who doesn't know the difference between right and wrong, who has no conscience. You see that she had a particularly tempestuous relationship with her mother. They say not just a normal child fighting with a mother.

And what is with the dynamics of this family? The father takes her hunting? She watches him shoot over and over again?

GRACE: You know, a lot of people think that -- my father would take to me ball games and drive me around. We'd do things together. I never shot a gun, but I don't think that's odd.

STARK: There's a difference between -- I don't know, Nancy. There's a difference between a ball game and taking someone who's too young to really know the difference between using guns on animals, violence, even being able to handle a gun. That person -- she shouldn't be around shooting.

GRACE: You know. Good question for Bob Pangburn, Sarah Johnson's defense lawyer.

Now, listen, I'm giving Bob a hard time. This guy knows his way around the courtroom. As much as I'm torturing him, tried a lot of cases, won a lot of cases. I thought you told me the other night your girl doesn't know anything about any guns.

PANGBURN: Well, she hardly knows anything about any guns.

GRACE: Oh, so she may know a little something about (gunshot noise)...

PANGBURN: Well, this is Idaho. Everybody knows something about a gun.

PINTO: I don't know about that. I don't know about that.

PANGBURN: Sarah took the opportunity to get outdoors with her folks. The witness -- as the state tries to say...

GRACE: Opportunity to get outside and...

(CROSSTALK)

GRACE: Go ahead. Go ahead. We'll let you speak.

PANGBURN: The state offers evidence -- all right -- that she went hunting and then sat down. And then the

next question right out of my mouth, did she take a gun? No.

So, I mean, this is a common theme with this case. They're trying to make her a murderer because she exaggerates some things and that she may not grieve like other people grieve.

GRACE: You know, so far, you have managed to keep this out of evidence.

Take a listen to this, Geoff Fieger, to a snitch from behind bars recounting what Sarah Johnson said after watching an episode of "Cold Case Files" about blood-spatter evidence.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: When you were watching this video along with Sarah -- and actually I guess it was the television program -- did the defendant turn to you and make any comment?

MALINDA GONZALEZ, SARAH JOHNSON'S JAILMATE: Yes.

UNIDENTIFIED MALE: What was that comment?

GONZALEZ: She said, "I'm going to get convicted."

(END VIDEO CLIP)

GRACE: Ruh-roh.

Hey, Fieger, I bet you hate it when your client says something like that after watching forensic files or "Cold Case." They go, uh-oh, I'm going to jail.

FIEGER: Yes, well, this is -- first of all, what's so unusual about this case is that this is a fairly young girl who's accused of a very brutal crime which is relatively unusual. But these type of statements, I'm not sure why the judge is letting them in.

GRACE: He didn't let it in yet. Not in yet, Geoff.

FIEGER: Well, and I hope it doesn't come in. That's not an admission of anything. And, frankly, a lot of the other suggestions...

GRACE: I don't know what you're talking about, Geoff. When I see "Cold Case Files," I don't think I'm going to get arrested and go to jail. But she did.

FIEGER: Well, maybe she -- well, maybe, but I don't think it's an admission of anything.

But another thing is, her demeanor. I have to agree. The fact that she doesn't respond the way other people think she should respond or think that they would respond to a tragedy is not evidence of guilt. And I don't really -- I really think it's far more prejudicial than probative in terms of the standard of proof in this case. That doesn't prove anything. If she said one thing, she didn't appear appropriately saddened by her parents' death, how people react to death is not indicative of guilt necessarily.

GRACE: Well, you know what? I've heard a lot of defense lawyers argue exactly that. Remember Geragos argued that in Peterson. You see where it got him.

FIEGER: No, I understand that. But this isn't pervasive, the fact that she was worried about her fingernails or something. That doesn't really prove anything.

In Geragos's case, there was tapes of during his wife's mourning, he's seducing another woman and lying about where he is. This hardly reaches that level, Nancy. And really, honestly.

GRACE: OK, you know what? I agree with you. I agree with you on that. Very quick response.

PINTO: Well, I think when she said, "When I killed my parents -- oops, I mean when they killed my parents," Geoffrey, to me, that is an admission against penal interest. I think that should come in.

GRACE: And as Fieger pointed out, as Fieger pointed out, that's not in yet. I'm going to let Lisa detail that for you when we get back.

Bob Pangburn, you got your work cut out for you, buddy.

We'll all be right back as we finish our analysis of the Sarah Johnson case. That case going down in Idaho right now, 16-year-old on trial for the murder of her mom and dad. It's hard to even take that in. The mom shot in the head. The dad shot, asleep, the dad shot in the chest coming out of the shower.

This is where they're sleeping tonight, the Bellevue cemetery.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

KASSI WEBBER, SARAH JOHNSON'S HIGH SCHOOL FRIEND: She told me that her and her mom didn't get along very well. They argued or didn't see eye- to-eye on things, I guess.

UNIDENTIFIED MALE: OK. And how about her dad?

WEBBER: Just that her and her dad were really close and she'd practiced volleyball and stuff with him. And they got along really well.

(END VIDEO CLIP)

GRACE: Welcome back. I'm Nancy Grace. Thank you for being with us tonight.

A tragic, a disturbing, and a heart-wrenching case out of Idaho. Many people believe Idaho is this rural, bucolic, pastoral setting. Then suddenly, bam, a double murder. Then blamed on the daughter of this couple, Alan and Diane Johnson, gunned down in the prime of their lives in their own home. She was asleep in the bed. He was just coming out of the shower when he took a rifle blast to the chest.

Again, welcome back. Very quickly to Anne Bremner. Anne is a veteran trial lawyer standing by with us in California.

Anne, you have handled a lot of juvenile cases, as have Fieger, as have I and Lisa Pinto.

BREMNER: Right.

GRACE: But bottom line, Anne, how hard is it to get a conviction on a teenager, especially a cute, girl teenager?

BREMNER: Well, it's very difficult, because we want to believe, you know, that children are children, you know, youth is truth, that they don't do things like this, that they don't mean to do things like this.

And, you know, we have a very experienced panel, of course, in these types of cases, but I think that there's just a real reluctance to want to take a child down as an adult.

GRACE: You know, Anne, I don't know if you can see a monitor. But we just showed Sarah Johnson in court and she was crying. And like, "Eh, eh, eh, and can I get my nails done before the funeral?" Oh, there she goes again.

BREMNER: Yes, I mean, that's terrible. That's just terrible, the manicure and pedicure. And that's going to really go against her.

You know, I was going to say one thing, Nancy. Down here in Santa Maria, we actually have one of Michael Jackson's fans out here in a pink bathrobe yesterday. So that's the only connection I can -- when you keep talking about the pink bathrobe in this case, there was one. But it's in Santa Maria, not Idaho.

GRACE: And apparently, Geoff Fieger, you and Pangburn don't think that the pedicure, manicure, massage statement means anything. But I can tell you this much: You have got a kid whose parents were just murdered in the house where they were sleeping, and she's like, "I need a manicure before the funeral."

FIEGER: I understand. But I'll tell you this: I disagree with your last guest who said it's difficult to convict children. I represented the youngest child ever charged with murder in the history of the United States, Nate Abraham. And my experience tells me that Americans are so angry about crime and their perception that children or young people commit crime that it's exactly the opposite.

In fact, when you start charging them as adults, it's very easy to convict children nowadays unfortunately. And we are punishing younger and younger children, imprisoning younger and younger children. I'm not excusing violence. All I'm suggesting to you, it's not a great trend in America.

GRACE: Well, there are really no good alternatives, no easy answers in the juvenile justice system. With that much, I'll agree with you, Geoff Fieger.

Lisa Pinto, you are referring to the slip of the tongue this girl apparently made.

PINTO: Well, there she is housed with an inmate, Malinda Gonzalez, and she says something about, "When I killed my parents -- I mean, when they killed my parents..."

GRACE: "When the killer killed my parents."

PINTO: Not me, not me. And then the snitch says, "Oh, don't worry" -- ironically -- "I won't snitch on you." So this is a great statement for the prosecution. And it's also very plausible, that there they were.

GRACE: It comes in, you're darn right.

What does it mean, Caryn Stark -- Caryn is a psychologist here in New York -- when you unload and you tell your cell mate all about the murder. And then you say, "But don't tell anybody. Shh." They always tell.

STARK: They always tell. And this is somebody who can't keep things to herself. It's kind of like a Freudian slip. What is a Freudian slip? It's something where somebody actually makes a slip that speaks the truth. And she keeps speaking the truth.

Also, Nancy, with her demeanor, I think that it's not just getting her nails done, but she was hugging some relative who came to console her. And then she turned over her shoulder and she said, you know, to her friend, "Go check to see if Bruno is OK."

GRACE: Her boyfriend.

STARK: So then how could that be somebody who is grieving? I mean, her -- I really disagree with Geoffrey. Her behavior is of somebody who has no feelings whatsoever.

GRACE: Very quickly to Bob Pangburn.

Bob, you managed to keep out the Freudian slip, as Caryn Stark just called it. She had been watching this "Cold Case Files," or "CSI," or something with her jail mate and went, "Oh, well, when I killed my parents -- oops, I mean, when that other person killed my parents." You kept that out of evidence, right? How did you do it?

PANGBURN: Well, for one thing, as one of your other guests stated, it simply isn't relevant to anything in this case. It doesn't show that -- it doesn't tend to prove any fact of any relevance.

GRACE: Sounds like a confession to me. It sounds like a confession.

PANGBURN: And this isn't a -- she's a 16-year-old girl. She's in jail. Her parents had been killed. I can't imagine that she'd have any issues with depression that would cause her to believe that she might get convicted. It had no bearing on this case. It should have stayed out. The judge did a good job of keeping it out.

GRACE: Well, I think the judge was wrong, because I think it was a confession. And this is not a confession that has been forced out of her, or tortured out of her, or tricked out of her. Where was she? Why is she watching TV behind bars, anyway, cable at that?

FIEGER: She has not been convicted of anything, Nancy.

PANGBURN: Precisely.

GRACE: OK, thank you for reminding me of that, Geoff. But she's still behind bars.

Is that true, Bob, number one? She has cable TV? I have got to pay for that. Have you seen the bills in New York at Time Warner? This girl has cable? She's talking about a manicure, and a pedicure, and a massage?

PANGBURN: Well, I can guarantee, you would not want to trade places with her when she was in jail in Blaine County. All she had was cable TV.

GRACE: OK, quick question: Before this incident, this girl, Sarah Johnson, 16 years old at the time, made pretty good grades, was on the volleyball team. She got along with her parents. I mean, didn't like her mom that much, but they got along, right?

PANGBURN: And she loved her dad. That's a fact that seems to kind of slip by everybody is that, well, yes, she didn't get along with her mom as well as maybe her mother or her would have liked. However, that's not unusual for teenage girls. But she loved her dad. Why on Earth would she have shot her dad? It makes no sense. It simply makes no sense.

GRACE: Well, you're up against a lot of forensic evidence.

Everybody, we are taking a quick break. Panel's still here, an all- star panel of lawyers and psychologist.

For some of you, local news is next. For the rest of you, we'll be right back. And remember, I'll bring you live trial coverage of the Sarah Johnson trial, 3:00 to 5:00 Eastern on Court TV's "Closing Arguments." For now, stay with us.

(COMMERCIAL BREAK)

GRACE: If you are a crime victim, if you know of an injustice, or you know about a case that needs a spotlight, call us, 1-888-GRACE-01, 472- 2301, or e-mail us, Nancygrace@CNN.com.

All of our cases tonight have had such an element of tragedy. I want to say something happy. A big happy birthday to our executive producer out in California. Happy birthday, Wendy.

And to my producer that I fired the other night. She came back. Elizabeth Yusguides, happy birthday, friend.

Oh, is Elizabeth back there in the control room? Hi, Liz. Oh, she's waving. We took her back. Thank you, dear.

Very quickly, Anne, final thought?

BREMNER: Well, speaking of tragedy, in this case, the Michael Jackson, you know, F. Scott Fitzgerald said, "Show me a hero, and I'll write you a tragedy." Michael Jackson's been a hero to so many. And I'm flipping on you, Nancy, here. I'm going defense.

This case has no evidence. There's a lack of witnesses, physical evidence of any kind. And now we have a witness, the complainant, who has lied in the past -- we've heard this now on the news...

GRACE: Right.

BREMNER: ... about his parents. And then there was an unfounded finding and then he recanted. And then his mother turns back around...

GRACE: OK, OK, OK, I get it. You're telling me credibility problems.

BREMNER: I know, but what I'm telling you right now, Nancy, is this case is -- the tide is turning. And I think, at this point, Michael Jackson, you know, is one of the most vulnerable in our system...

(CROSSTALK)

GRACE: I'm glad to hear it, since ~~they~~ haven't even had opening statements. The tide is turning. OK, point well-taken.

Very quickly, Geoff Fieger, final thought.

FIEGER: Hey, congratulations on ~~your~~ new show.

But these shots of cemeteries and this music, Nancy, I cry uncontrollably during these breaks. So we've got to lighten it up.

GRACE: Good. It'll be the first time years I've seen you shed a tear.

FIEGER: We have got to lighten it up.

And believe me, Michael Jackson ~~better~~ be aware that, if at the end he's convicted, they take him right away. So I'm not sure he'll be around at the end.

GRACE: Bring your toothbrush, Michael.

And very quickly, to Bob Pangburn, I wanted to come back out to you, but I've run out of time. Please join us again. This guy is representing Sarah Johnson in court. And he's got a tough case, made a lot of scores today in court, keeping out a lot of evidence. I guess I should say congratulations.

See you later, friend.

We are signing off everyone. I want to thank all of my guests. Caryn Stark, Anne Bremner, here in the studio, Lisa Pinto and Geoff Fieger.

My biggest thank you to you for being with us tonight. I'm signing off until tomorrow night, 8 o'clock sharp here. Good night, friend.

ERICA HILL, CNN ANCHOR: I'm Erica Hill with your "Prime News Update."


More Iran today -- rain, rather, today in Southern California. That's adding to an already bad scene in that area, sending houses skidding down hillsides. Floods are washing out roads, even an airport runway. Nine people have been killed. The mayor of Los Angeles is asking the city be declared a federal disaster area.

President Bush continues his European tour in Slovakia after visiting Germany earlier today. He'll meet with Russian President Vladimir Putin there tomorrow. He's asking Russia to renew its commitment to democracy.

And New York now ended its efforts to identify remains from the World Trade Center attacks. The city's medical examiner says it was able to identify 58 percent of the more than 2,700 known victims. The office received fewer than 300 of those bodies intact.

"PRIME NEWS TONIGHT" is straight ahead. We've got it all covered for you, including what rocket fuel and breast milk have to do with each other. Stay tuned.

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NANCY GRACE

Legal Analysis of Michael Jackson Case; In "Verdict Watch" Sarah Johnson's Trial is Discussed

~~Archived March 15, 2005, 20:00:00~~ ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

NANCY GRACE, CNN HOST: Tonight, where is Jessie, the nine-year-old Florida girl who disappeared from her own bedroom in February. Tonight, a break in the case. We take you there live. And Michael Jackson's alleged child molestation victim under attack. The boy described under oath being teased by classmates about sex with Michael Jackson.

And we are on a "Verdict Watch" in the Sarah Johnson trial. The 16-year-old girl from Idaho on trial for the shooting deaths of her own parents. The jury, now sequestered, is in deliberations.

Good evening, everybody. I'm Nancy Grace. I want to thank you for being with us tonight.

The Michael Jackson prosecution now entering a new phase in its case against the music icon. The boy accused off the stand following a brutal cross and then re-direct exam. Now, hard evidence coming in to court to help corroborate the boy's testimony, testimony about child molestation at Michael Jackson's hands.

And Sarah Johnson facing two counts of murder one. The victims, her mom and dad. An Idaho jury now deciding whether she's off to college or to the ladies' penitentiary.

But first, where is Jessie Lunsford, the nine-year-old missing for weeks now?

(BEGIN VIDEO CLIP)

RUTH LUNSFORD, GRANDMOTHER OF MISSING GIRL: So I went in there and I put her to bed.

UNIDENTIFIED MALE (voice-over): On March 4th, Jessie Lunsford's grandmother, Ruth, was given a polygraph test by the FBI. After reviewing those results, police now say Ruth gave at least two responses that raised red flags. Police will not elaborate on those responses but tell us they have conducted further interviews with Jessie's grandma.

(END VIDEO CLIP)

GRACE: Let's go straight out to San Francisco and victim's advocate, Marc Klaas. Also with us tonight, in Denver, defense attorney Lisa Wayne; in New York, former prosecutor Nichole Williams; in Dallas, behavioral therapist Catherine Burton.

Welcome, everyone.

To you, Marc Klaas. Marc, what's your take on the person of interest in the Jessica Lunsford case?

MARC KLAAS, VICTIMS' RIGHTS ADVOCATE: Well, I think that reinforces everything that we have thought all along, that this is probably very close to the family in one way or the other. I think what we're probably going to find out, since they know who this individual is, they are actively looking for this individual.

They suspect that he's out of state or that this individual is out of state, that it's probably somebody from a close circle, either the parent of a friend of Jessie's, either somebody from the school, somebody from the church and/or somebody from the neighborhood. I think they're much closer today than they were in the past and that this case will probably

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break wide open within the next couple of -- well, hopefully by week end.

GRACE: Lisa Wayne, why would someone acquainted with this girl, unless they had a preplanned vacation or somebody's in the hospital, Lisa, defense attorney, why would somebody just leave the jurisdiction, leave the state, and disappear? That's not ringing a red bell to you?

LISA WAYNE, DEFENSE ATTORNEY: No, I think I agree with you, Nancy. I think that does ring a red bell. And I think what's interesting to me is that the FBI felt it necessary to take the steps to polygraph the grandmother. I mean, that's not always the case in these situations.

And something that she said either alerted them, or they're throwing out a red herring to the public somehow and somehow trying to bring in someone under some other kind of guise. I mean, it's very interesting, but, again, it's not the usual step to give someone a polygraph if they believe what she's telling them.

GRACE: Well, Lisa, I know where you're coming from. And it's hard to rope somebody into a polygraph.

But Marc Klaas, when your little girl, Polly, went missing, you begged, "Please, polygraph me. Search my house, search my car, do anything. Just move on with the investigation." You took a polygraph and passed with flying colors.

KLAAS: Well, you know, I did, and other members of my family did, as well. And they really have no choice but to try to eliminate the people that were closest to her so they can spread it out.

I don't know how much one can read into this polygraph of the grandmother. She is elderly. And this probably is the most traumatic episode of her life. So, I mean, her emotions have to be jumping all over the place.

GRACE: Well, you know, anybody strapped up to a polygraph machine is going to have emotions, all right?

KLAAS: Of course.

GRACE: But, you know, I don't know how much emotion had to do with failing some questions on a polygraph. But take a listen to this.

(BEGIN VIDEO CLIP)

SHERIFF JEFF DAWSY, CITRUS COUNTY, FLA.: We have followed up over 3,000 leads. This particular lead led us to believe there was some true credence and that we needed to go out and start looking for this individual. I am watching what I say. He is in a region -- we believe he is in a specific region. And that's the reason why we have not released his name yet.

(END VIDEO CLIP)

GRACE: OK. If you don't know already, there is a person of interest. They are calling it in the Jessica Lunsford disappearance, the nine-year-old little girl out of Florida, taken out of her bedroom at her grandparent's house.

To Nichole Williams, you know, they called Scott Peterson a person of interest for a really long time until they finally arrested him.

NICHOLE WILLIAMS, FORMER PROSECUTOR: That's right, Nancy. And I think the police officers and the investigators are moving very quickly. And they are trying to find out the person that they can, but they don't want give too many details to the public. They want to make sure they can complete their investigation and catch him before he gets away.

GRACE: Then, of course, I notice that you're saying a him. We don't know who the suspect is. But let's just get real about it. This is a town of 2,300 people, all right? You had to know Jessica Lunsford, or have been watching her as in the Elizabeth Smart case, to know to go to this home, her grandparent's home, get the girl, and take her. So this is somebody she knows in the neighborhood, somebody she knows at school, somebody she knows through her family.

Very quickly, guys, take a listen to this.

(BEGIN VIDEO CLIP)

RUTH LUNSFORD, GRANDMOTHER OF MISSING NINE-YEAR-OLD: When God made Jessie, he made an angel. And we have always called her Princess. I know she's out there. I hope she can hear it.

(END VIDEO CLIP)

GRACE: I don't know, Catherine Burton, behavioral therapist. I know that the authorities have stated the grandmother had some answers on a polygraph that raised alarm. But I don't know. Just looking at her, I find it -- I mean, how does a 70-plus-year-old grandmother fit into a murder not leaving a clue? I don't see it.

CATHERINE BURTON, PSYCHOLOGIST: I don't see it, either. I can't imagine somebody at that age who would do something like that. And besides, a polygraph test does not always give accurate results. You're right. There are a lot of emotions involved in this case, and it could be a false reading.

GRACE: And the reality is, Marc Klaas, Catherine's right. I pretty much swear by polygraphs, if they are given by a state authority. But we don't know what question she failed up on. It could have been asking about this person of interest. Maybe she was covering or trying to make her relative look better in the eyes of police. Maybe she was covering for somebody else not involved in this case. Maybe it was about her husband's criminal record. She could have failed an innocent question.

KLAAS: Yes, that's absolutely correct. And I think there's another thing that's very significant. It's a fact that the little purple dinosaur disappeared with the girl. Somebody had enough feelings, personal feelings for little Jessica, to allow her to take a toy with her.

A straight out sexual predator would not have done that. It's only evidence. It only is a trail of evidence. So this is probably somebody close, somebody that knew her. Let's hope it ends quickly and safely.

GRACE: You know what it says to me, Marc? It says to me this is someone that, in their minds, think they have a relationship with this little girl, like Elizabeth Smart and "Immanuel." Remember him, and Wanda Barzee, his henchman in crime?

They took the girl to be a child bride under some wacky religion and allowed her to take things from her room when she left like her shoes because they thought that he had a relationship with her. She was going to be his bride, for Pete's sake. And in this case, allowing little Jessica Lunsford to take a dolly with her, the little purple dinosaur, it says a lot to me about who the perpetrator is.

KLAAS: Yes. It's significant.

GRACE: One step closer to the truth in the case of Jessica Lunsford. We have not given up on little Jessie.

Elizabeth, as we go to break, how about a shot of Jessie? Please take a look, everyone.

(COMMERCIAL BREAK)

GRACE: Michael Jackson's accuser finally off the stand. The boy witness there for days on end. The defense landed some serious punches. Can the prosecution make a comeback?

Tonight, in Denver, you know her well, defense attorney Lisa Wayne; in New York, former prosecutor Nichole Williams; defense attorney Richard Herman in Dallas; behavioral therapist Catherine Burton.

But first, to Santa Maria, California, and "Celebrity Justice" correspondent Jane Velez-Mitchell.

Jane, I'm almost afraid to ask. What happened in court today?

JANE VELEZ-MITCHELL, "CELEBRITY JUSTICE": Well, today, Nancy, this accuser explained himself, explained some of this questionable behavior. He said the reason that he told his dean that Michael Jackson didn't do anything sexual with him is that when he went to school, after the Bashir documentary aired and after he'd left Neverland for good, he was being taunted by his classmates.

They were saying, "Look, there's the boy who was raped by Michael Jackson." And he implied that he felt embarrassed and ashamed so that when the dean asked him, "Tell me the truth, did anything happen?" He said, "No, nothing happened," because he didn't want anybody to think anything had happened because he wanted it all to go away. He was embarrassed.

GRACE: You know, Catherine Burton, I've been arguing with defense lawyers all day long about the significance of this boy not telling his principal -- I'm equating the dean to a principal. There in the high school.

What kid -- I mean, I know adult victims of child molestation that still don't talk about what happened to them. It's not a kind of thing you just blurt out just because somebody stops you in the hall and asks you.

BURTON: You're exactly right, Nancy. I have dealt with many of these cases. And children feel very intimidated. There's a lot of guilt. There's a lot of shame. And there's a lot of self-blame. Most of these young people, if they've been victimized, feel like in some way that they're responsible, that they've caused it or in some way that they have to take responsibility, very often because the perpetrator had put that message in their heart.

GRACE: You know what? I could not have said it better, Catherine.

Nichole Williams, have you noticed in rape cases, in child molestation cases, even sometimes in robbery cases, the victim thinks, "Did I lead them on somehow? Did I come across the wrong way? Was I in the wrong place?" They always think somehow they're responsible for somebody else's crimes.

WILLIAMS: That's right, Nancy. It's victims of all kinds of crimes, robberies, rapes, any kind of crime that a person has to testify, something uncomfortable, something painful, they are going to have a difficult time admitting in other places. And it's absolutely understandable. And I think this jury will give this boy a break on it.

GRACE: Well, apparently, they were watching him very, very carefully and taking a lot of notes when the boy would

testify. Well, take a look at part of what the jury saw in court.

(BEGIN VIDEO CLIP)

MICHAEL JACKSON, SINGER ACCUSED OF MOLESTATION: People will say, "Why is he always with children." Well, I was raised in a world with adults. When kids were playing and in bed sleeping, I was up doing clubs. I was doing club dates 3:00 in the morning. The striptease would come on after us. You know, I was -- we were performing. And we weren't -- we didn't have friends.

(END VIDEO CLIP)

GRACE: That is from the rebuttal documentary cut by a Michael Jackson staffer.

Now, Jane Velez-Mitchell, this rebuttal documentary, the jury has seen it ad nauseum in the courtroom. But you know what? The defense has the right to do that. They can play or show the same evidence over, and over, and over if they can think up a new question to ask about it, right?

VELEZ-MITCHELL: Yes. And the reason the defense is playing it over and over again is because it is so very damaging. This family does gush about Michael Jackson. They gush for about 40 minutes. They do it on the outtakes when they don't think they're on camera. And this is supposedly at the time that they were being held against their will.

And Tom Sneddon, the district attorney, on his redirect of the accuser tried to undo some of the damage today and say, "Hey, how do you feel about Michael Jackson now?" And I have to tell you, the answer was a little bit underwhelming. The boy said, "I really don't like him anymore. I don't think he deserves the respect that I used to give him as the coolest person in the world." But he didn't emote a lot. He didn't say, "I feel violated." He didn't say Michael Jackson's ruined my life, so I think that...

GRACE: Jane, Jane, Jane...

VELEZ-MITCHELL: ... Tom Sneddon sort of got him off the stand because he was doing more harm than good in a sense.

GRACE: Catherine Burton, throw me a bone, all right? What do you expect? If this kid was molested, right? If, if, I haven't heard the whole case. But if he was, do you think a 15-year-old boy is going to gush and go on, and on, and on about him being violated in front of a jury? Forget it.

BURTON: Not at all. Not at all, because of the shame and the guilt. And also, you have to realize that there's a top of trauma bond that forms between a victim and his perpetrator. And very often, he feels very loyal to the victim and does not want to reveal any shameful information about the perpetrator.

GRACE: Lisa Wayne, I'm sure you'd be having a field day with this witness on the stand.

WAYNE: Well, you know, Nancy, I think what's interesting about it is that this is the kid who is so ashamed about what happened he doesn't want to tell the truth to the principal. And if he's so ashamed, right now is the perfect time to get off the stand at the end, look at Michael Jackson and say, "I despise him," and let all of his friends in his community know that this was despicable. He hates him.

And that's the way, if it's consistent with what he's telling us about not telling the principal, that would be consistent. And it's not consistent. And that's, you know, that would be part of my argument here if I'm Mesereau, is like, come on. Can you really buy this? Can you really buy what this kid is saying?

GRACE: You get a 15-year-old boy to talk about sex molestation where he's the victim, I'll give you a medal. I'll give you a medal, Lisa Wayne.

WAYNE: This isn't the normal 15-year-old boy, Nancy. That's the difference.

GRACE: Well, says you, says you. I don't know. He looks like the normal child molestation victim to me.

Quick break, quick break. To "Trial Tracking": Today, Atlanta courthouse shooter Brian Nichols first appearance in an Atlanta Fulton County jail. He showed up on a re-filed rape and sodomy charge. Nichols' alleged shooting rampage left four dead, including a superior court judge, Rowland Barnes. Nichols, shackled arms and legs, surrounded by 20 sheriff's deputies, all unarmed, but now carrying tasers.

(BEGIN VIDEO CLIP)

JUDGE FRANK COX, COBB COUNTY SUPERIOR COURT: With the charges faced against you, sir, you have a possible life imprisonment of rape, 20 years on aggravated assault with intent to rape, 20 years on aggravated sodomy, 10 years on false imprisonment, 20 years on burglary, and five years on possession of a firearm during the commission of a crime.

Those are the possible penalties you face on those charges, sir. Anything else you wish to say or need to ask the court, Mr. Nichols?

BRIAN NICHOLS, ATLANTA COURTHOUSE SHOOTER: Not at this time.

COX: All right, sir.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

JACKSON: The moment I started breaking the all-time records of the biggest selling albums of all time, they called me weird overnight, strange, wacko. You know, they said I'm a girl, I'm homosexual. He wants to buy the Elephant Man bones. He sleeps in a hypodermic chamber. None of that stuff is true.

(END VIDEO CLIP)

GRACE: God, who would ever think Jackson's weird? OK, that is from rebuttal documentary cut by a Jackson staffer.

Straight back out to Jane Velez-Mitchell from "Celebrity Justice." Jane, where do we stand now? Who's on the stand?

VELEZ-MITCHELL: Well, we've heard from three law enforcement officers. The lead investigator, Sergeant Steve Robel, has been cross-examined by another defense attorney, Robert Sanger. And I have to tell you, he laid out a whole timeline, which took a long time, and then proceeded to attack the timeline.

One of the things that I'm wondering about this case is why nobody has set up a chart with the timeline. I mean, part of the problem for the prosecution is that everything is so darn confusing, the dates of every complicated conspiracy case. I don't know why somebody just didn't put up a chart with all the dates to make things simpler. And it really raises questions for both sides. But finally, we had a timeline, although it was attacked.

GRACE: Elizabeth, what is that he's got draped across himself? Whoa, jewels of some sort. OK, that is neither here nor there, another appearance by Michael Jackson.

OK. You said, Jane, three law enforcement then the detective? Is that what you said?

VELEZ-MITCHELL: Well, there were three law enforcement officers on the stand including Sergeant Steve Robel who was the lead investigator...

GRACE: OK.

VELEZ-MITCHELL: ... in the case. And he was cross-examined by Robert Sanger today.

GRACE: What are they trying to do with these cop witnesses? I see this is the second phase of the trial. They have gotten the brother up, the sister up, the boy accuser up and now they're going into police testimony. Are they bringing any hard evidence like computer drives, documents, porn, anything to support what this boy has said under oath?

VELEZ-MITCHELL: Well, Sergeant Robel did present some photographs of adult materials that were allegedly seized in Michael Jackson's bedroom. These adult materials were not...

(CROSSTALK)

GRACE: What do you call it that? Why do you call it that, adult material? It's porn.

VELEZ-MITCHELL: Well, it wasn't necessarily porn. One was a Bruce Weber coffee-table book that was apparently sent to the superstar by Bruce Weber. And that's something that could be on anybody's coffee table. I mean, that's not what you would consider porn. But I have to tell you...

GRACE: Well, it is to me on what's inside of it.

(CROSSTALK)

VELEZ-MITCHELL: Yes. But I have to tell you, everybody's talking about sounding the death knell for the prosecution's case. "Celebrity Justice" has learned that the prosecution does have some surprises up its sleeve.

They, too, have apparently a star witness, a friend of one of the alleged unindicted co-conspirators, Marc Shaffell, who apparently took notes, very detailed notes, at the time of the alleged conspiracy and also may have secretly, in fact did, secretly record, our sources say, telephone conversations between him and some of the alleged unindicted co-conspirators. And this witness could be the star witness in the case doing for the prosecution what this accuser himself did not do for the prosecution team.

GRACE: Jane, you said that the state was bringing on adult materials. I find it very difficult to believe the state thought a coffee-table book was incriminating. Now, what's in the book, Jane?

VELEZ-MITCHELL: Well, we don't know. We just saw three photographs that were apparently a box that contained 512

adult materials. Here is the thing that I'm left with. I mean, the sense we got was that Michael Jackson's Neverland was just awash with pornography. That's kind of the sense we have gotten over the last few months. And so far, we haven't seen that.

GRACE: OK. We'll be right back with Jane Velez-Mitchell. I'm not letting it go, Jane. I want to hear about the magazines and what's in the coffee-table book you're talking about.

As we go to break, I want to remind you that we hear at Headline News want very much to help solve unsolved homicides. Tonight, take a look at Andre Price, 21-years-old shot dead outside his home visiting in Denver ten years ago. Please call the Carole Sund/Carrington Foundation. There may be a reward involved.

(COMMERCIAL BREAK)

THOMAS ROBERTS, CNN ANCHOR: Hi, everybody. I'm Thomas Roberts. And this is your "Headline Prime Newsbreak."

A Pentagon official now says all tests for anthrax at Pentagon postal facilities have come back negative. Some facilities were closed today because of positive results reported earlier. There are no signs of exposure to anthrax among workers. Five people were killed and 17 sickened in the 2001 anthrax attacks.

It's judgment day for the man accused of playing a role in the largest bankruptcy in U.S. history. Former WorldCom chief Bernard Ebbers was found guilty on all nine counts in an \$11 billion accounting fraud case. Ebbers could spend the rest of his life in prison.

And some good news today for breast cancer patients receiving radiation. Researchers say they may no longer face an increased risk of heart damage. A report in the journal of the National Cancer Institute credits improvements in radiation therapy with reducing the danger. More than 40 percent of women with breast cancer undergo radiation following surgery.

And that is the news for now. I'm Thomas Roberts. We take you back to NANCY GRACE.

GRACE: Michael Jackson, as a boy, growing up, turning into a man, a music icon. Many of us grew up dancing to Michael Jackson, loving Michael Jackson, wanting to be like Michael Jackson.

OK, wait a minute. Things are changing. Is that Michael -- this is Michael Jackson today. What the hey? Got my umbrella, got my umbrella holder, got my entourage, my bodyguard, my parents, my arm band, my fake military medal. I'm ready for court.

Welcome back, everybody.

OK, Jane, one last -- let me refresh your recollection, as I would say to witnesses that just simply would not answer the question. Did the words teenage, barely legal, total filth ring a bell?

VELEZ-MITCHELL: Yes, that was -- and I feel like I'm under cross-examination -- the most incriminating evidence submitted today was a photograph of Teenage Magazine. And it said "Barely Legal, Total Filth."

Now, it was a photograph. We weren't able to look at it and see what was inside it. But obviously that is an adult material. I mean, you can call it porn.

The defense did establish on cross-examination that no witnesses to anybody's knowledge has actually seen -- no witnesses have seen that particular magazine. In other words, it is not something that the kids necessarily were looking at. It was just found in Michael Jackson's bedroom.

GRACE: To Richard Herman, defense attorney, they have got to connect the porn to Jackson for it to mean anything. I mean, half the men in America, if not more, have a Penthouse or a Playboy or something stashed away in the house. You don't go to jail for that.

RICHARD HERMAN, DEFENSE ATTORNEY: No, I think this was insignificant today, this magazine.

But, Nancy, what was interesting -- the young accuser testified that...

GRACE: Richard, I bet you've got a Playboy at home.

HERMAN: How do you know?

GRACE: I can just look at you and tell.

HERMAN: You must have a Playgirl at home, too, I bet.

GRACE: I think it may even be a Penthouse. OK, go ahead.

HERMAN: I think you have a Playgirl at home. Come on, Nancy.

GRACE: I'm not wasting my \$3. Trust me. Go ahead.

HERMAN: All right.

This accuser admitted on the stand that in most instances everything that was said about Michael Jackson in the rebuttal video was true. And don't you find it significant this guilt and shame you claim the young accuser may have felt which precluded him from telling the dean of the school and precluded him from telling the Los Angeles police and child protective services, all of a sudden, a few months later, was relieved after he met a civil personal injury attorney and was speaking to the referred psychologist from that attorney.

I find that significant, Nancy. Don't you?

GRACE: You know, Richard, I do. I really do. And we went into this thing knowing that there were going to be credibility problems with the boy. We knew he'd get ripped up on cross-examination. I just don't know if the state's going to be able to make a comeback, if the jury believes the boy anymore.

What it all boils down in my mind to, trial strategy, can you corroborate what the boy said? In other words, if this porn was found where the boy said it would be, that is very significant. If he says Jackson showed it to him, if Jackson took him to porn sites on a computer, if they can show that on the hard drive, that that day, at that time Jackson visits those sites, the boy will be corroborated.

Very quickly, we are going to switch gears to the Sarah Johnson trial. Remember the Idaho teen that local prosecutors say shot and killed her parents with a high-powered rifle? Well, her defense team says a mystery shooter pulled the trigger. The jury is now sequestered for deliberation.

From Boise, Idaho, Johnson's defense attorney, Bob Pangburn, is joining us.

You are a brave man, because he's seated alongside two prosecutors -- he's outnumbered -- Jim Thomas, Justin Whatcott.

Very quickly to you, Jim, why sequester the jury? They hate that.

JIM THOMAS, PROSECUTOR: Well, I think given the fact that it's a high-profile case, there's been a lot of media coverage, Judge Wood felt it was appropriate. And I think it probably is in this case. Because it's gathered a lot of media attention throughout the nation. So I think it's probably a wise thing. I know the jury hates it. They're sick of it already, I suspect.

GRACE: Well, aren't you a tiny bit afraid, Bob Pangburn, that sequestering a jury will make them reach, basically, a grudge verdict? They're sick of being in the Motel 8, they're sick of the county courthouse food, so they come up with a verdict?

BOB PANGBURN, SARAH JOHNSON'S ATTORNEY: No. I think this jury is way too smart to do that. And I think, frankly, they are being treated pretty well. I'm not worried about a grudge verdict.

GRACE: Yes, well, you know, I think this jury has heard so many weeks of testimony, and they haven't been out that long. How long have they been out, Justin?

JUSTIN WHATCOTT, PROSECUTOR: About a day and an hour so far. They've only deliberated for about an hour yesterday and then all day today. I suspect they've probably just begun to go through all of the evidence.

GRACE: You know, Bob Pangburn, you came up -- it's very Johnny Cochran of you. Very Johnny Cochran, "No blood, no guilt." It reminds me, "If it doesn't fit, you must acquit."

Bob, you say no blood, no guilt, but wasn't her pink bathrobe covered in her mother's blood? That's blood. There's blood all over the walls.

PANGBURN: A lot of blood around, and not a bit on her head at all. No blood, no guilt.

GRACE: OK, let me ask you a question, Bob. What became of her shower cap, the one that everybody had seen before but suddenly disappeared? I think I know what happened to it, her shower cap.

PANGBURN: You know, it's funny about that shower cap. I don't think we heard anything about that shower cap until rebuttal. I think the shower cap was something to try to patch up some of the other problems with this case. I don't know. You'll have to ask these two guys.

GRACE: You know, I think I will.

Jim Thomas, response?

THOMAS: Well, actually, Matt Johnson talked about it in his direct testimony at the very end. He did mention it, that there was a shower cap his sister kept in the shower all the time. Jim Vavold came on in rebuttal and said that he had seen it there Saturday night. But it actually came up in direct.

GRACE: To Richard Herman, defense attorney. You know, paracide, a slaying version of parenticide, is only about 2 percent of all homicides and about 70 to 80 percent of that is by males. This is a very rare case, Richard.

HERMAN: Extremely rare, Nancy. And I think while Mr. Pangburn has done a great job in the defense here, I think the evidence is overwhelming. I think there's going to be a conviction here.

GRACE: You know, though, if you think about it, to Jim Thomas, this is a very tough sell to a jury. You look over at Sarah Johnson. Wasn't she on her volleyball team? Her grades were good. It's going to be hard for them to accept that she would gun down her mom and dad.

THOMAS: What's always been a problem, Nancy, is trying to get over that hurdle that a 16-year-old girl could do something so horrendous. I think the evidence clearly points to the fact that she did.

Sarah's a good actress. I think we saw that in court. She almost rivals her lead defense attorney in acting and theatrics. And I think Sarah probably put on a good show for them. But I think, in fact, if they look at the evidence, they're going to come to no other conclusion. Sarah had to be the one that did this.

PANGBURN: And yet no blood has gotten on her head.

GRACE: Why? Why does Sarah have to be the one? Why does Sarah have to be the one, Jim?

THOMAS: You know, one of the things, that robe. I mean, is Bruno going to wear the robe? Bruno's got an alibi. We're still looking for these unknown shooters that Mr. Pangburn's talked about. They're not there. Everything was found within the house, within the suburban, within the guest house, areas that Sarah knew. So there's just absolutely no other evidence that someone else was there.

Now, Mr. Pangburn talks unknown DNA and fingerprints. But basically we're going to have four people in that house that are not associated with the family. I just don't think it happened.

GRACE: Bob Pangburn, we'll give you a chance to respond to that allegation that you are an actor.

And then we'll go back to Catherine Burton. Boy, do we need a shrink. She is a psychologist and behavioral expert. Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

PANGBURN: Why would she wear her robe backwards? Why would the owner of a robe ever wear their robe backwards? Why would they do that? Why would they not just put the tie around and close it?

(END VIDEO CLIP)

GRACE: Welcome back, everybody. Thank you for being with us.

Sixteen years old when she was accused of gunning down both her mother and father, her mother asleep in the bed, her father just coming out of the shower. Now facing two charges of murder one in an Idaho courtroom. The jury is sequestered and are in deliberations.

To Catherine Burton, psychologist, Catherine, the phenomenon of parenticide is extremely rare, even more rare in a young woman. What's your take on this case?

BURTON: Well, one thing -- I think families do not have the ability to resolve conflict and anger builds up, and builds up, and builds up and reaches a threshold. And when that happens, we have a problem. Somebody's going to get hurt.

Somebody has a rage attack and they explode impulsively. And that's what we're seeing. It's just a build up of anger. And families can't resolve anger. They don't have the tools; they don't have the skills.

GRACE: To, very quickly, Justin Whatcott, speaking of an impulsive outburst of rage, does anything point to premeditation as opposed to an outburst in this case?

WHATCOTT: All the evidence in this case, Nancy, points to premeditation. Somebody had to go around and collect all those items that were used in this crime. And when you look at the wearing of the robe, and the staging of the knives, and the things that went on during that crime scene, this was not an impulsive act. This was something that was thought out and carried out according to that plan.

GRACE: Take a listen to this.

(BEGIN VIDEO CLIP)

THOMAS: Alan had to die -- that is the long and short of it -- for her to live out her fantasy to live with Bruno. There was no other way. She could not get rid of her mother and still have her dad there.

(END VIDEO CLIP)

GRACE: Jim, was this all over a boy, a boyfriend?

THOMAS: You know, I think, in essence, I mean, that was the straw that broke the camel's back. There had been conflict with Diane and Sarah throughout. We know that from Dr. Beaver's, from Dr. Lundt's testimony, but I think ultimately it was.

Sarah was obsessed with Bruno. There's no doubt about that. And when they prohibited her from seeing him, I mean, I think Sarah's identity was wrapped up in Bruno's, quote, "love for her." So I think it was. I mean, as odd as it sounds and as crazy as it sounds, I believe that's what it was.

GRACE: Does it sound crazy, Catherine?

BURTON: Yes, but, you know, I'm seeing this more and more often particularly in young females, is that they have this love addiction or this love obsession for some male and they so much want the attention and approval that they project an idealized image on to him as though he's this wonderful answer to all their dreams. And they get caught up in this romantic fantasy.

GRACE: She was so young to be looking for Mr. Right instead of Mr. Right Now. I mean, she is 16-years-old and to idealize this guy, Bruno Santos, illegal alien, high school dropout with a drug arrest.

But you guys may be right.

Bob Pangburn, take a listen to this.

(BEGIN VIDEO CLIP)

WHATCOTT: All the evidence in this case, all of it, points towards Sarah Johnson. Sarah Johnson is the one who had the motive to commit this crime. She was obsessed with Bruno.

(END VIDEO CLIP)

GRACE: Bob Pangburn, what about claims your client, not only a double murderer, but that it was because she was obsessed with a boyfriend her parents disapproved of?

PANGBURN: Well, I've never believed that when I started this case. I believe it even less now. The person who had the motive to commit this crime, or more accurately what I believe to get his gang buddies to do it, was Bruno Santos.

He had been all over that property. He had access to it. He had been sneaking in and out of the house. Even had sex with this girl right in her own bed. And for anybody to say, to even believe, that he couldn't have access to the entire property, to have found the guns, and had his buddies ready to do this is just -- I simply can't see that it's believable that that's not what happened.

GRACE: Well, two things. Two things, Bob. Number one, it would be hard for me to believe her boyfriend had anything to do with the shootings and she not know about it and be an accomplice to it. And number two, none of the DNA, the fingerprints, nothing went back to Bruno Santos.

PANGBURN: But it didn't go to Sarah, either. And nothing -- there's been no indication in this case whatsoever that any leads from people who related to Bruno Santos, any people who were his friends, his associates, his relatives, that any of these people were seriously checked. You know, had we had these kinds of resources that the state had, I believe we could have found these people.

GRACE: OK, guys. Here's the state's case in a nutshell. Take a listen.

(BEGIN VIDEO CLIP)

THOMAS: She had to physically go around that bed, go into that bathroom, swing that gun up, and as Dad's coming out of that shower, shoot him. That's premeditation.

(END VIDEO CLIP)

GRACE: Let me go out to Lisa Wayne.

In this case, there was quite a bit of staging at the scene. In other words, we have been told that this girl loved murder mysteries. And when you get to the scene, knives have been laid point to point as if on display. There's a knife lying on the bed as if it were some type of a weapon when clearly the high-powered rifle was the weapon. The scene was staged. What does that say to you, Lisa?

WAYNE: You know, it can say either a perfect set-up against this girl where this guy knew all of these things, he had intimate facts about who she was, and she was an easy set-up. And so to stage it makes her look like the obvious person. I mean, it's difficult.

And, again, I have to agree with the defense lawyer on this, as well. When you have such a grizzly scene, you expect some physical evidence, an iota to be related to her. And jurors want that, they need it, and they ask for it.

GRACE: Her bathrobe was covered – the girl's bathrobe, Sarah Johnson's bathrobe, covered in the mom's blood.

WAYNE: Right. I understand that.

GRACE: That's blood. Why does everybody keep saying there's no blood?

WAYNE: And I think what the problem is that linked to, was she wearing that robe at the time that this happened or was someone else? Who set her up?

GRACE: OK, but Nichole, what about this theory, this other person came into the house? And if you are trying to say the boyfriend or his gang member friends did it, why would they try to set up his love interest? And if they were going to set her up by wearing her pink bathrobe during the murder, then why throw it away?

WILLIAMS: Exactly, Nancy. Why wouldn't they take it with them with everything else? This is a very child-like staging of the scene. It's clear that this young woman was desperate to get away from her parents. And apparently the only way she saw out was to kill them. But the killer would have taken the bathrobe with them. She just couldn't leave it.

GRACE: Richard Herman, thoughts?

HERMAN: These are young kids here. And, you know, the more I hear about this gang-related activity, it's a possibility. But this jury is going to want to convict on this. And that robe is devastating evidence against the defendant.

GRACE: And, Bob Pangburn, we have got 30 seconds left. We kind of ganged up on you tonight, friend. So go at it.

PANGBURN: Well, the one fact that I have never been able to figure out is how the physical aspect of blood flying through the air is going to stop at the collar of that robe and go no higher. It's not going to be on her neck. It's not going to be on her face. It's not going to be in her ears. It's not going to be in her ear piercings, her eyebrows or her hair, all of which were tested by the state. The state's own forensic experts came all the way up from Boise to test her with very sensitive chemical kits. And nothing was there.

GRACE: OK, that's just what you argued to the jury. "No blood, no guilt."

PANGBURN: Absolutely.

GRACE: Johnny Cochran would be so proud of you, Bob Pangburn.

Everybody, Bob is actually a veteran criminal defense attorney in the Idaho jurisdiction.

Quick break, but to "Trial Tracking": Celebrity lawyer Mark Geragos, who defended celebs like Michael Jackson, Winona Ryder, is planning to star on a reality TV show called "Extreme Justice." He'll represent plaintiffs in civil suits.

Meanwhile, Scott Peterson will be formally sentenced to the murder of his wife and son tomorrow.

(COMMERCIAL BREAK)

GRACE: If you are a crime victim with a story to tell, know of an injustice or a case that needs a spotlight, call 1-888-GRACE-01, 472-2301, or cnn.com/nancygrace.

Let's go straight back out for the rebuttal argument from the state.

Justin Whatcott, what say you, sir?

WHATCOTT: I say one thing that nobody's talking about, and nobody has pointed out on your show, at least that I have seen, is these 38 green paint particles on blue fibers that match those on her T-shirt. That puts that robe on her.

Nancy, it's common sense.

GRACE: OK, wait a minute. Wait a minute. Explain in simple terms.

WHATCOTT: The inside of that robe contained 38 blue fibers with green paint on them. That morning, Sarah was wearing a blue shirt with green paint on it.

GRACE: OK, you know what? That's very powerful evidence.

I want to thank all of my guests that were with me tonight, all fantastic guests, Bob Pangburn, who is Sarah Johnson's defense attorney, gave one heck of a closing statement, Jim Thomas and Justin Whatcott, who have presented the case for the state, veteran trial lawyers, trial lawyer defense attorney Lisa Wayne joining us, psychologist and behavior expert, Catherine Burton, high-profile defense attorney Richard Herman and former prosecutor Nichole Williams here in our set in New York.

Thank you to everyone.

I'm Nancy Grace signing off for tonight. I want to remind you all I'll see you on Court TV tomorrow with the Peterson sentencing. That's 3:00 to 5:00 Eastern.

To all of my guests, thank you.

And to the rest of you, thank you for inviting us into your homes this evening. I'll see you tomorrow night right here, 8 o'clock sharp Eastern. And until then, good bye friend.

As we leave you, this is a shot of Jessie Lunsford's bedroom where Jessie should be sleeping right now after three long weeks still missing, her bedside light still on.

MIKE GALANOS, CNN ANCHOR: Hello, everyone. I'm Mike Galanos. And here's your "Headline Prime Newsbreak."

Italy's premiere reportedly says his country will start pulling its troops out of Iraq this fall. Italian news reports say the withdraw could begin in September. Public opinion for involvement in Iraq among Italians has declined, especially after U.S. troops accidentally killed an Italian security agent and wounded a journalist. Italy has about 3,000 troops in the region.

The former CEO of WorldCom has been convicted on all nine counts of helping to mastermind an \$11 billion accounting fraud. Bernard Ebbers faces sentencing in June and could get up to 85 years in prison. The scandal led to the largest bankruptcy in U.S. history.

And spring may seem far away in the Southwest. Snow fell throughout much of Texas and Oklahoma panhandles, and parts of New Mexico were covered by two to three feet of snow. Those stories and more when Erica Hill joins me for "PRIME NEWS TONIGHT." That's coming up next.

END

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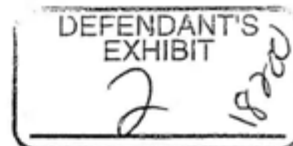
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September 2, 2003

ADMITTED

Date 10-16-04

Bellevue Marshall - Via Facsimile 788-7846
Blaine County Sheriff - Via Facsimile 788-5559
Blaine County Prosecuting Attorney - Via Facsimile 788-5554



Re: Sarah Johnson

Gentlemen:

I have agreed to represent Sarah Johnson regarding a criminal matter that occurred on today's date. I understand that she is currently being questioned regarding this case and I direct that any and all questioning immediately cease, until and unless she has had a chance to communicate with me. By this letter I am invoking my client's rights under the US Constitution, specifically the 5th Amendment.

Sincerely

**188 P.3d 912**
STATE v. JOHNSON

STATE v. JOHNSON
188 P.3d 912 (ID 2008)

STATE of Idaho, Plaintiff-Respondent,
v.
Sarah Marie JOHNSON, Defendant-Appellant.

No. 33312.
Supreme Court of Idaho, Boise, May 2008 Term.

June 26, 2008

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This Page Contains Headnotes.

Appeal from the District Court of the Fifth Judicial District, Blaine County, R. Barry Wood, J.

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Molly J. Huskey, State Appellate Public Defender, Boise, for appellant. Jason Curtis Pintler, Deputy State Appellate Public Defender argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Kenneth K. Jorgensen, Deputy Attorney General argued.

BURDICK, Justice.

Appellant Sarah Marie Johnson was convicted of two counts of first-degree murder. Johnson appeals her conviction. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 2, 2003, Alan and Diane Johnson (the Johnsons) were shot and died in their home. Subsequently, the Johnsons' sixteen year old daughter, Sarah Johnson (Johnson), was charged with two counts of first-degree murder. A jury found Johnson guilty of first-degree murder of both Alan and Diane Johnson. The district court sentenced Johnson to concurrent life sentences, plus fifteen years under I.C. § 19-2520 for a firearm enhancement.

II. ANALYSIS

Johnson raises four issues on appeal. Johnson argues that because aiding and abetting was not charged in the charging document, the district court's instruction to the jury on aiding and abetting constructively amended the charging document and resulted in a fatal variance. Johnson also argues she was deprived of her constitutional right to a unanimous jury verdict because the district court did not instruct the jury it must unanimously agree on whether Johnson actually killed the Johnsons or whether she aided and abetted in the killing of the Johnsons. Finally, Johnson argues her constitutional rights were violated when the district court failed to remove a certain juror from the jury pool or obtain an unequivocal commitment that the juror would follow all of the court's instructions. We address each issue in turn.

A. Constructive Amendment and Variance

Johnson asserts that the charging document did not support a jury instruction on aiding and abetting, and that

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consequently, the jury instruction constituted an impermissible variance or a constructive amendment.^(fn1) Whether there is a variance or constructive amendment is a question of law over which this Court exercises free review. *See State v. Colwell*, 124 Idaho 560, 565, 861 P.2d 1225, 1230 (Ct.App.1993).

A variance between the charging document and the verdict is fatal when "the record suggests the possibility that the defendant was misled or embarrassed in the preparation or presentation of his defense." *State v. Windsor*, 110 Idaho 410, 418, 716 P.2d 1182, 1190 (1985) (citing *Berger v. United States*, 295 U.S. 78, 82-84, 55 S.Ct. 629, 630-31, 79 L.Ed. 1314, 1318-19 (1935)). Johnson argues there is a variance because the facts the jury would have to find to convict Johnson of aiding and abetting differ from the facts alleged in the indictment. Johnson further argues this variance was

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fatal because it prejudiced her in the preparation and presentation of her defense.

A constructive amendment occurs when the charging terms of the charging document have been altered literally or in effect. *United States v. Dipentino*, 242 F.3d 1090, 1094 (9th Cir.2001). The constructive amendment doctrine springs from the Fifth Amendment right to indictment by a grand jury. *See Stirone v. United States*, 361 U.S. 212, 215-16, 80 S.Ct. 270, 272-73, 4 L.Ed.2d 252, 255-56 (1960). The Fifth Amendment right to an indictment by a grand jury is not a due process right that applies to the states through the Fourteenth Amendment. *Branzburg v. Hayes*, 408 U.S. 665, 688 n. 25, 92 S.Ct. 2646, 2660 n. 25, 33 L.Ed.2d 626, 643 n. 25 (1972). Nonetheless, the Idaho Constitution contains a provision with similar wording to the Fifth Amendment, on which the constructive amendment prohibition is based.^(fn2) *See Idaho Const. art I, § 8*. The Idaho Court of Appeals has appropriately applied the constructive amendment analysis to this Idaho constitutional provision. *See Colwell*, 124 Idaho at 566, 861 P.2d at 1231.

Johnson argues that in Idaho the charging document must contain facts showing the defendant aided and abetted, and that the failure to charge aiding and abetting in the indictment was a violation of due process.

1. Idaho Code § 19-1430 and I.C.R. 7(b) are not in conflict.

Johnson asserts there was a constructive amendment because the jury was asked to determine whether the State proved an element not charged in the indictment. Johnson argues that aiding and abetting contains a separate *mens rea* element--a community of purpose in the unlawful undertaking--and a separate *actus reus* element-- proof that the defendant participated in or assisted, encouraged, solicited, or counseled the crime. However, this argument overlooks Idaho's statutory abolition of the distinction between accessories and principals.

Idaho Code § 19-1430 provides:

Distinction between accessories and principals abolished.--The distinction between an accessory before the fact and a principal and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Thus, Idaho, consistent with many other jurisdictions, has abolished the distinction between principals and aiders and abettors, and instead treats aiding and abetting as a theory under which first-degree murder can be proved and not as a separate offense or a crime of a different nature. *See State v. Ayres*, 70 Idaho 18, 25, 211 P.2d 142, 145 (1949) (holding the information charges one offense (involuntary manslaughter) and that it was sufficient to put defendant on trial upon either the theory that he was a principal or the theory that he was an aider and abettor); *see also, e.g., United States v. Ginyard*, 511 F.3d 203, 211 (D.C.Cir.2008) ("Aiding and abetting is not a separate offense; it is only a theory of liability--one ground upon

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which the jury may find him liable for the charged offense."); *United States v. Smith*, 198 F.3d 377, 383 (2d Cir.1999) (holding aiding and abetting is not a discrete criminal offense); *Londono-Gomez v. Immigration & Naturalization Serv.*,

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699 F.2d 475, 476 (9th Cir.1983) ("[T]he aiding and abetting statute does not define a separate offense but rather makes punishable as a principal one who aids or abets another in the commission of a substantive offense.").

However, Johnson argues the last clause of I.C. § 19-1430, which states that it is unnecessary to allege facts other than what is required in a charging document against a principal, is procedural, is in conflict with I.C.R. 7, and thus, is of no effect. Idaho Criminal Rule 7(b) provides that "[t]he indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."

When a statute and rule "can be reasonably interpreted so that there is no conflict between them, they should be so interpreted rather than interpreted in a way that results in a conflict." *See State v. Currington*, 108 Idaho 539, 543, 700 P.2d 942, 946 (1985) (Bakes, J., dissenting).

Here, the statute and the rule, I.C. § 19-1430 and I.C.R. 7, can be reasonably interpreted so that there is no conflict between them. Idaho Criminal Rule 7(b) requires the charging document be "a plain, concise and definite written statement of the essential facts constituting the offense charged." Idaho Code § 19-1430 then provides that in the case of aiding and abetting, the "essential facts" are only those facts that are required in charging the principal. Thus, the rule and the statute can be reasonably interpreted so that there is no conflict between them.

Furthermore, even if a conflict did exist between I.C.R. 7 and I.C. § 19-1430, the statute would prevail. When there is a conflict between a statute and a criminal rule, this Court must determine whether the conflict is one of procedure or one of substance; if the conflict is procedural, the criminal rule will prevail. *State v. Beam*, 121 Idaho 862, 863, 828 P.2d 891, 892 (1992).

Although a clear line of demarcation cannot always be delineated between what is substantive and what is procedural, the following general guidelines provide a useful framework for analysis. Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated.

Id. at 863-64, 828 P.2d at 892-93 (emphasis removed) (quoting *Currington*, 108 Idaho at 541, 700 P.2d at 944 (quoting *State v. Smith*, 84 Wash.2d 498, 527 P.2d 674, 676-77 (1974))). "[L]egislation is a constitutional exercise of the Legislature's power to enact substantive law [and] that legislation is to be given due deference and respect." *In re SRBA Case No. 39576*, 128 Idaho 246, 255, 912 P.2d 614, 623 (1995).

Johnson argues that although the first part of I.C. § 19-1430 is substantive, the last clause stating "no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal," is procedural. However, the last clause pertains more than to the essentially mechanical operations of the courts; it is defining and regulating the mechanism for giving the defendant notice when that defendant committed a felony as an accessory. The statute abrogates the distinction between principals and accessories and mandates the defendant "be prosecuted, tried, and punished as [a] principal[. . .]." I.C. § 19-1430. A conclusion that the entire statute is substantive is further supported by I.C. § 18-204, which defines principals as: "[a]ll persons concerned in the commission of a crime . . . whether they directly commit the act constituting the offense or aid and abet in its commission. . . ." Together, I.C. § 18-204 and I.C. § 19-1430 show a legislative intent to consider defendants as principals whether they directly committed the crime or aided and abetted in the commission of the crime. The Legislature's definition of principal and abolishment of the distinction between principal and accessories does not pertain to mechanical

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operations of the courts; the Legislature is creating, defining, and regulating primary rights. Thus, I.C. § 19-1430 is substantive and does not overlap with this Court's power to create procedural rules. Therefore, even if I.C. § 19-1430 and I.C.R. 7(b) were in conflict, the statute would prevail.

In conclusion, we hold that there is no conflict between I.C. § 19-1430 and I.C.R. 7(b), that I.C. § 19-1430 is substantive, and that in Idaho, it is unnecessary to allege any facts in the charging document other than what is required in a charging document against a principal.

Johnson also asserts her due process rights were violated by the lack of reference to aiding and abetting in the charging document.

First, relying on *Gault v. Lewis*, 489 F.3d 993 (9th Cir.2007), Johnson argues the notice required by the Fourteenth Amendment must come from the charging document itself. *Gault* recognizes the Sixth Amendment's and Fourteenth Amendment's right to be informed of the nature and cause of the charges made in order to adequately prepare a defense. *Id.* at 1002-03. The Ninth Circuit expressed doubt that sources outside the charging document could provide the necessary notice. However, *Gault* does not actually hold sources outside the charging document cannot ever provide the necessary notice. *Id.* at 1010 ("[F]or purposes of our analysis today, we will assume-without deciding-that such sources can be parsed for evidence of notice to the defendant. . . .").

Moreover, in *Gault*, the Ninth Circuit was looking at notice of the actual underlying charge and not a theory of liability; the Ninth Circuit observed that a court can look to sources outside the charging document to determine whether a defendant had adequate notice of a particular theory of the case. *Id.* at 1009 (citing *Murtishaw v. Woodford*, 255 F.3d 926, 953-54 (9th Cir.2001), in which the Ninth Circuit held that a defendant charged with first-degree murder was provided constitutionally sufficient notice to support a felony murder jury instruction). Here, aiding and abetting was not the actual underlying charge, it was a theory of liability. See *Ayres*, 70 Idaho at 25, 211 P.2d at 145.

Second, Johnson argues the facts constituting the crime of aiding and abetting are elements, and thus, must be charged in the charging document in order to meet due process requirements. Johnson asserts the charging document must contain the elements of the offense and that a defendant must be put on notice of all of the elements of the crime essential to the punishment sought to be inflicted. For support Johnson cites to *Apprendi v. New Jersey*, 530 U.S. 466, 510-18, 120 S.Ct. 2348, 2373-2377, 147 L.Ed.2d 435, 466-471 (2000) (Thomas, J., concurring), and *Jones v. United States*, 526 U.S. 227, 232, 119 S.Ct. 1215, 1218, 143 L.Ed.2d 311, 319 (1999), where the Court stated: "Much turns on the determination that a fact is an element of an offense rather than a sentencing consideration, given that elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt."

The Tenth Circuit considered and rejected the same argument Johnson makes here. See *United States v. Alexander*, 447 F.3d 1290, 1298-99 (10th Cir.2006), cert. denied ___ U.S. ___, 127 S.Ct. 315, 166 L.Ed.2d 236 (2006). In *Alexander* the Tenth Circuit considered *Jones* and *Apprendi* and held that "a charge of the predicate crime puts defendant on notice that the jury may be instructed on aiding and abetting, thus satisfying any due process concerns." *Id.* at 1299; see also *United States v. Creech*, 408

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F.3d 264, 273 (5th Cir.2005) (holding *Apprendi* does not upset the long-standing practice of giving aiding and abetting jury instructions even when that theory is not charged in the indictment; thus, there is no Fifth Amendment violation). Johnson asserts *Alexander* is unpersuasive because it distinguishes *Jones* and *Apprendi* on the basis that those cases addressed what is required to increase a punishment. However, *Alexander's* holding did not depend upon that distinction; it held that due process was satisfied because the defendant had notice of the predicate crime and because aiding and abetting is not a separate offense but is a variant of the underlying offense. 447 F.3d at 1299.

In Idaho there is no distinction between principals and aiders and abettors, and it is unnecessary the charging document allege any facts other than what is necessary to convict a principal. I.C. § 19-1430. Johnson contends that in light of Fourteenth Amendment jurisprudence, *Ayres* and its progeny should be overruled because *Ayres*, which bases its ruling on I.C. § 19-1430, "in essence, holds that the Idaho Legislature can legislate away the rights of individuals protected by the Fourteenth Amendment."

Many jurisdictions have held that it is unnecessary to charge aiding and abetting in the charging document and that there is no due process violation when a court gives an aiding and abetting jury instruction even when aiding and abetting is not charged in the charging document. See, e.g., *United States v. Garcia*, 400 F.3d 816, 820 (9th Cir. 2005) ("We have also held a number of times in different contexts that aiding and abetting is embedded in every federal indictment for a substantive crime."); *United States v. Dodd*, 43 F.3d 759, 762 n. 5 (1st Cir.1995) (stating it is not necessary to plead an aiding and abetting charge because that charge is implicit in all indictments for substantive offenses); *United States v. Clark*, 980 F.2d 1143, 1146 (8th Cir.1992) ("It is well established that a defendant may be convicted of aiding and abetting even though he was not charged in that capacity. Aiding and abetting is an alternative charge in every count, whether implicit or explicit.") (citation omitted); *United States v. Iglesias*, 915 F.2d 1524, 1528

(11th Cir.1990) ("One who has been indicted as a principal may be convicted on evidence showing only that he aided and abetted the offense."); *Quigg v. Crist*, 616 F.2d 1107, 1111 (9th Cir.1980) ("[T]he giving of an aiding and abetting instruction does not violate due process where the state has abolished the distinction between principals and accessories, and where there is evidence before the jury to support the instruction."); *United States v. Beardslee*, 609 F.2d 914, 919 (8th Cir.1979) (rejecting the argument that defendant's due process rights were violated by an aiding and abetting instruction when the indictment did not explicitly charge him with aiding and abetting); *Glass v. United States*, 328 F.2d 754, 756 (7th Cir.1964) (holding there was no error in giving an instruction on aiding and abetting when defendant was not charged with aiding and abetting because "[a]iders and abettors . . . are chargeable directly as principals."); *People v. Garrison*, 47 Cal.3d 746, 254 Cal.Rptr. 257, 765 P.2d 419, 433 n. 12 (1989) ("[I]n California the definition of a principal has historically included those who aid and abet . . . and notice as a principal is sufficient to support a conviction as an aider or abettor."); *Hoskins v. State*, 441 N.E.2d 419, 425 (Ind.1982) ("One can be charged as a principal and convicted on proof that he aided or abetted another in committing the crime."); *State v. Satern*, 516 N.W.2d 839, 843 (Iowa 1994) (holding it was not a surprise or unfair to the defendant for the state to pursue a theory of aiding and abetting at trial when the charging document did not refer to aiding and abetting); *State v. Pennington*, 254 Kan. 757, 869 P.2d 624, 629 (1994) (holding defendant's due process rights were not violated by a jury instruction on aiding and abetting; it is unnecessary for the State to charge aiding and abetting in the charging document in order to pursue that theory at trial); *People v. Rivera*, 84 N.Y.2d 766, 622 N.Y.S.2d 671, 646 N.E.2d 1098, 1099 (1995) ("Traditionally, it has been permissible to charge and admit evidence convicting a defendant as an accessory where an indictment charges only conduct as a principal"); *State v. Johnson*, 272 N.W.2d 304, 305 (S.D. 1978) ("It is settled law that a conviction may be supported by proof that the defendant was an aider and abettor even though the

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charging instrument charges him as a principal.").

Therefore, because Idaho has abolished the distinction between principals and aiders and abettors, and because it is well-established in Idaho that it is unnecessary to charge the defendant with aiding and abetting, we hold there was no variance, constructive amendment, or due process violation. Moreover, even if there were a variance, Johnson was not prejudiced in the preparation of her defense. First, the State did not introduce evidence of a possible third party shooter; rather, it was Johnson who argued that she could not have been the actual shooter. Second, the State's proposed jury instructions submitted before trial included a jury instruction on aiding and abetting. Thus, Johnson was not misled or embarrassed in the preparation of her defense.

B. Unanimity Instruction

Johnson contends the district court erred in failing to give an instruction requiring the basis for the jury's verdict (aider and abettor or principal) be a unanimous decision.^(fn4) Johnson acknowledges she did not request this instruction below but contends the issue can be raised on appeal because the absence of the instruction was fundamental error.

Though I.C.R. 30(b) requires objections to jury instructions be made below, this Court reviews fundamental errors in jury instructions even in the absence of an objection below. *State v. Anderson*, 144 Idaho 743, 749, 170 P.3d 886, 892 (2007). To determine whether there was fundamental error, the Court must first determine whether there was any error. *Id.* at 749, 170 P.3d at 891. In this case, as there is no error, there can be no fundamental error.

"When reviewing jury instructions, this Court must determine whether the instructions, as a whole, fairly and adequately present the issues and state the law." *State v. Sheahan*, 139 Idaho 267, 281, 77 P.3d 956, 970 (2003) (quoting *Silver Creek Computers, Inc. v. Petra, Inc.*, 136 Idaho 879, 882, 42 P.3d 672, 675 (2002)). An erroneous instruction is reversible error only when "the instructions, taken as a whole, misled the jury or prejudiced a party." *Id.*

In all felony cases, the jury's verdict must be a unanimous verdict. Idaho Const. art I, § 8; *State v. Scheminisky*, 31 Idaho 504, 508, 174 P. 611, 612 (1918), *overruled on other grounds by State v. Johnson*, 86 Idaho 51, 62, 383 P.2d 326, 333 (1963).

Johnson relies on a line of cases from the Idaho Court of Appeals which hold that "[a] specific unanimity instruction is required . . . when it appears . . . that a conviction may occur as the result of different jurors concluding that the defendant committed different acts." *State v. Gain*, 140 Idaho 170, 172, 90 P.3d 920, 922 (Ct.App.2004); *see also State v. Montoya*, 140 Idaho 160, 167-68, 90 P.3d 910, 917-18 (Ct.App.2004); *Miller v. State*, 135 Idaho 261, 267-68, 16 P.3d

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937, 943-44 (Ct.App.2000). However, these cases do not support Johnson's argument. In those cases the defendants were charged with various sex crimes. In each case there was evidence of more than one criminal act on each count. Thus, the court required that when "several distinct criminal acts support one count, jury unanimity must be protected by the state's election of the act upon which it will rely for conviction or by a clarifying instruction requiring the jurors to unanimously agree that the same underlying criminal act has been proven beyond a reasonable doubt." *Gain*, 140 Idaho at 173, 90 P.3d at 923 (emphasis in original). This is not a case where there was "evidence of more criminal acts than have been charged." See *Montoya*, 140 Idaho at 167, 90 P.3d at 917; see also *Miller*, 135 Idaho at 268, 16 P.3d at 944. Here, only one criminal act was charged-- first-degree murder--and there was no evidence presented of additional criminal acts.

Schad v. Arizona, 501 U.S. 624, 111 S.Ct. 2491, 115 L.Ed.2d 555 (1991), a United States Supreme Court plurality opinion as to the unanimity issue, supports a conclusion that a specific unanimity instruction was not necessary. *Schad* challenged his first-degree murder conviction because the jury was not

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instructed to unanimously agree on the alternative theories of premeditated and felony murder.(fn5) *Id.* at 630, 111 S.Ct. at 2496, 115 L.Ed.2d at 564. The plurality recognized that jurors need not reach agreement on the preliminary factual issues underlying the verdict. *Id.* at 632, 111 S.Ct. at 2497, 115 L.Ed.2d at 565. To determine whether the absence of the specific unanimity instruction violated the defendant's due process, the plurality looked at whether there was "an immaterial difference as to mere means" or whether there was "a material difference requiring separate theories of crime to be treated as separate offenses subject to separate jury findings."(fn6) *Id.* at 633, 111 S.Ct. at 2497, 115 L.Ed.2d at 566. The plurality noted:

[W]e are not free to substitute our own interpretations of state statutes for those of a State's courts. If a State's courts have determined that certain statutory alternatives are mere means of committing a single offense, rather than independent elements of the crime, we simply are not at liberty to ignore that determination and conclude that the alternatives are, in fact, independent elements under state law.

Id. at 636, 111 S.Ct. at 2499, 115 L.Ed.2d at 568. Here, the Idaho legislature has abolished all distinction between principals and aiders and abettors, I.C. § 19-1430, and this Court treats aiding and abetting as a theory and not as a separate offense with distinct elements, see *Ayres*, 70 Idaho at 25, 211 P.2d at 145. Thus, there is no basis for a specific unanimity instruction.

Likewise, several other jurisdictions have held that it is unnecessary to provide a specific unanimity instruction when a defendant can be convicted of an offense based on actions as a principal or as an aider and abettor.(fn7) *Garcia*, 400 F.3d at 819-20; *United States v. Horton*, 921 F.2d 540, 545-46 (4th Cir.1990); *United States v. Eagle Elk*, 820 F.2d 959, 961 (8th Cir.1987) ("Even if the jury was divided on whether [the defendant] committed the principal crime or aided or abetted in its commission, there can be no question that the illegal act was murder."); *People v. Maury*, 30 Cal.4th 342, 133 Cal. Rptr.2d 561, 68 P.3d 1, 59-60 (2003); *State v. Martinez*, 278 Conn. 598, 900 A.2d 485, 494-95 (2006); *Simms v. United States*, 634 A.2d 442, 445-46 (D.C.1993); *State v. Allen*, 339 N.C. 545, 453 S.E.2d 150, 159-60 (1995), overruled on other grounds by *State v. Gaines*, 345 N.C. 647, 483 S.E.2d 396 (1997); *Holland v. State*, 91 Wis.2d 134, 280 N.W.2d 288, 292-93 (1979).

Therefore, we conclude it is unnecessary to instruct the jury that it must be unanimous as to the theoretical basis for committing the offense (aider and abettor or principal) because aiding and abetting is not a separate offense from the substantive crime. Consequently, the district court's failure to instruct the jury to the contrary was not error.

C. Juror 85

Johnson argues that the district court's failure to remove Juror 85 from the jury pool or its failure to obtain an unequivocal assurance from Juror 85 that he would follow all of the district court's instructions was error.

During voir dire, Juror 85 expressed a concern that "if evidence was presented by a specialist, and then for some reason [the court] would tell [the jury] to completely

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disregard that, and [he] felt that it was good evidence, then [he] [doesn't] know if [he] could completely disregard it."

The State argues Johnson has waived her right to raise this issue on appeal because she did not make a challenge below. Johnson responds that the information regarding Juror 85 did not come forth until after she had already passed the panel for cause and that, in any case, this Court can consider the issue because it constitutes fundamental error.

This Court has held that the failure to challenge a juror for cause "indicates a satisfaction with the jury as finally constituted." *State v. Bitz*, 93 Idaho 239, 243, 460 P.2d 374, 378 (1969). Furthermore, on appeal a defendant cannot claim dissatisfaction with the jury panel when the defendant "failed to exhaust the means available to her to exclude unacceptable jurors. . . ." *See State v. Mitchell*, 104 Idaho 493, 501, 660 P.2d 1336, 1344 (1983).

Johnson argues she had passed the panel for cause before Juror 85 revealed he might have difficulty disregarding certain evidence. It is true that Johnson passed the panel for cause just prior to Juror 85's statement. Nonetheless, after Johnson passed the panel for cause, the trial court asked the potential jurors whether there was any reason they could not sit as fair and impartial jurors. Juror 85 then voiced his concern, as did several other jurors. The trial court communicated those jurors' concerns with the attorneys and gave them the opportunity to again question the jurors who had voiced concerns. This questioning was to take place outside of the presence of the other jurors. Counsel for both sides stated that they did not wish to further question Juror 85. Counsel then questioned other jurors and after further questioning had the opportunity to object to those jurors remaining on the panel. Thus, both attorneys were given the opportunity to again challenge for cause those jurors who had expressed concern. Nonetheless, Johnson chose not to further question or challenge Juror 85 after he stated he was unsure whether he could disregard certain evidence.

However, this Court will consider issues raised for the first time on appeal if there is fundamental error. *State v. Haggard*, 94 Idaho 249, 251, 486 P.2d 260, 262 (1971) ("In case of fundamental error in a criminal case the Supreme Court may consider the same even though no objection had been made at time of trial.")

Error that is fundamental must be such error as goes to the foundation or basis of a defendant's rights or must go to the foundation of the case or take from the defendant a right which was essential to his defense and which no court could or ought to permit him to waive. Each case will of necessity, under such a rule, stand on its own merits. Out of the facts in each case will arise the law.

State v. Lewis, 126 Idaho 77, 80, 878 P.2d 776, 779 (1994) (quoting *State v. Knowlton*, 123 Idaho 916, 918, 854 P.2d 259, 261 (1993)). To determine whether there was fundamental error, the Court must first determine whether there was any error. *Anderson*, 144 Idaho at 748, 170 P.3d at 891.

"The determination of whether a juror can render a fair and impartial verdict rests in the sound discretion of the trial court." *State v. Luke*, 134 Idaho 294, 298, 1 P.3d 795, 799 (2000). The trial court's determination is reviewed for an abuse of discretion. *Id.* To determine whether an abuse of discretion occurred this Court uses a three-part test: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason. *Id.*

Johnson first argues an expression of an inability to follow instructions is analogous to a juror expressing a bias towards a party and cites to *State v. Hauser*, 143 Idaho 603, 150 P.3d 296 (Ct.App.2006). However, *Hauser* is distinct from this case in that Juror 85 did not admit to a bias and here neither attorney nor the court attempted, unsuccessfully, to elicit an unequivocal assurance that the juror would act with impartiality.

In any case, the record does not show the judge acted erroneously in allowing Juror 85

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to remain on the panel. The judge asked follow-up questions to Juror 85 and responded with an appropriate explanation addressing Juror 85's concern. Moreover, Johnson has failed to demonstrate she was prejudiced by Juror 85's presence on the panel. Juror 85's concern was that he may have difficulty completely disregarding evidence from a specialist.

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Johnson has pointed to several instances where the judge instructed the jurors to disregard certain information. However, in most of those instances either the evidence did not come from a specialist or after an appropriate foundation was laid, the evidence was allowed. The only relevant instance of any such instruction Johnson pointed to occurred when the judge instructed the jury to disregard testimony by an expert witness that it was possible during the manufacturing process of making the latex glove, someone's DNA could have gotten inside the gloves. This single instance of the judge instructing the jury to disregard evidence presented by a specialist is insufficient to show Johnson sustained any prejudice by Juror 85's presence on the panel.

We conclude that below there was no error, therefore there was no fundamental error. Hence, we hold Johnson has waived the right to object to Juror 85 remaining on the panel.

III. CONCLUSION

We hold there was no variance or constructive amendment. We also hold it was not necessary to give a specific unanimity instruction. Finally, we hold Johnson has waived the right to object to Juror 85 remaining on the panel. We affirm the decision of the district court.

Justices J. JONES, W. JONES, HORTON and TROUT, Pro tem concur.

Footnotes:

FN1. On appeal, Johnson does not argue there was insufficient evidence to support the giving of the aiding and abetting instruction.

FN2. Article I, section 8 of the Idaho Constitution provides:

Prosecution only by indictment or information.--No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger; provided, that a grand jury may be summoned upon the order of the district court in the manner provided by law, and provided further, that after a charge has been ignored by a grand jury, no person shall be held to answer, or for trial therefor, upon information of public prosecutor.

The Fifth Amendment to the U.S. Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger. . . .

FN3. Therefore, Johnson's reliance on *Cole v. Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948) is misplaced. In *Cole*, the Court held the Fourteenth Amendment was violated when the defendants were charged with violating a certain subsection of a state act but had their conviction upheld based on a different subsection of the state act. *Id.* at 198-99, 68 S.Ct. at 515-16, 92 L.Ed. at 646. However, there the Court held the two subsections created separate offenses. *Id.* at 201 n. 4, 68 S.Ct. at 517 n. 4, 92 L.Ed. at 647 n. 4. That is not the case here where the Idaho Legislature has made clear that aiding and abetting is not a separate offense. See I.C. § 19-1430.

FN4. The district court did instruct the jury that its verdict must be unanimous.

FN5. The plurality noted this right can be analyzed under the Sixth Amendment right to a unanimous verdict or under the Fourteenth Amendment right to due process. *Id.* at 635 n. 5, 111 S.Ct. at 2498 n. 5, 115 L.Ed.2d at 567 n. 5. The plurality concluded "the right is more accurately characterized as a due process right than as one under the Sixth Amendment." *Id.*

FN6. In a majority opinion, the U.S. Supreme Court later cited *Schad* with approval to support the proposition that "a federal jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, say, which of several possible means the defendant used to commit an element of the crime." *Richardson v. United States*, 526 U.S. 813, 817, 119 S.Ct. 1707, 1710, 143 L.Ed.2d 985, 992 (1999).

FN7. Johnson argues cases from other jurisdictions are not persuasive because they do not analyze the right to a unanimous jury verdict provided by the Idaho Constitution. However, these cases reiterate the applicable principle in this case: aiding and abetting is an alternative means of committing the crime charged and whether the defendant committed the acts as a principal or as an aider and abettor, the defendant's liability is the same.

ID

P.3d

IDAHO STATE POLICE
Forensic Services
Latent Section

PLAINTIFF'S
EXHIBIT
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Case Notes

m20032402 Bellevue Dept. Public Safety 0309000116 11/25/03
Lab. No. Agency Case No. Date

Three latent prints to AFIS.

Item #2 - latent 2-1 from rifle scope

Item #18a - latent 18a-1 from live round 264 Ammo.

Item #18b - latent 18b-7 from empty plastic box
Winchester Super X 264 box

NO HIT

05/2001

004550

Lab No. m26032402
Initials SL
Drawn No 102
529

EXTERNAL CHAIN OF CUSTODY

INTERNAL CHAIN OF CUSTODY

530

ITEM NUMBERS LC, Photo
 FROM Mich, Hall TO Marina Eguren
 DATE 11/21/03 AGENCY _____ VIA _____

ITEM NUMBERS LC, Photo
 FROM Marina Eguren TO Mich, Hall
 DATE 11-29-03 AGENCY _____ VIA _____

ITEM NUMBERS _____
 FROM _____ TO _____
 DATE _____ AGENCY _____ VIA _____

ITEM NUMBERS _____
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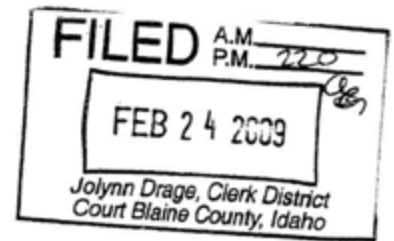
ITEM NUMBERS	DATE	TO	BY	DATE	TO	BY
#2, 10, #11	09/04/03	dw	MN	09/09/03	dw	dw
#12, #20, #21	09/04/03	dw	MN			
1-3-10, 8, 9, 19, 22, 23, 210	9/4/03	CRN	MN	11/18/03	CRN	CRN
#18	09/05/03	dw	dw			
#27, 28	09/09/03	dw	MN			
27a	09/09/03	dw	dw			
#20	09/09/03	dw	dw			
#17, 13, 21	09/11/03	dw	MN			
29, 30, 31	09/12/03	dw	MN			
7, 12 + 18	09/17/03	dw	dw			
14, 15, 16, 17	09/17/03	dw	dw	09/23/03	dw	dw
#20	09/19/03	dw	dw	09/23/03	dw	dw
27A	9/22/03	CRN	dw			
#21	09/23/03	dw	dw			

OTHER INFORMATION:

PLAINTIFF'S
EXHIBIT
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CV 03-00007-0001



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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,)	
	)	Case No: CV-006-324
Petitioner,)	
	)	AFFIDAVIT OF
vs.	)	ROBERT J. KERSCHUSKY
	)	IN SUPPORT OF MOTION FOR
STATE OF IDAHO,	)	ORDER OF DISCOVERY
	)	RELATING TO NEWLY
<u>Respondent.</u>	)	DISCOVERED EVIDENCE

I, Robert J. Kerchusky, after being first duly sworn, upon information and belief,
depose and say:

1. I am a fingerprint consultant with an area of expertise in latent fingerprint analysis.
2. I am experienced in fingerprint analysis as the result of a life long career as an fingerprint technician with the Federal Bureau of Investigation, a latent fingerprint technician with the Washington DC Metropolitan Police Department and a Supervisor with the Bureau of Criminal Investigation, Department of Law Enforcement for the State of Idaho. (Copy of resume attached hereto and made a part hereof.)

3. In the course of my former employment with the Idaho State Police Bureau of Criminal Identification I supervised Maria Eguren, who continues her employment with that agency in the position of fingerprint technician.

4. I have continued to maintain a positive and communicative relationship with Ms. Eguren as professional colleagues.

5. Maria Eguren testified in State v. Johnson CR-2003-00182, the criminal matter underlying the instant Post-Conviction Relief case pending herein.

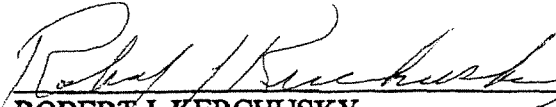
6. I know Maria Eguren to be a person of high moral and ethical standards known for her candor and veracity.

7. On or about February 13, 2009 I communicated with Maria Eguren by telephone conversation wherein I was informed of a new development in the Johnson case, specifically that a match had been identified by the AFIS system wherein one of the formerly unidentified latent fingerprints found on the tools of murder was matched to an individual not investigated as part of the case, being one Christopher Kevin Hill, DOB [REDACTED].


8. Based upon my employment experience with the Bureau of Criminal Identification AFIS system latent print matches are turned over to other technicians for further confirmation and fully documented by reports.

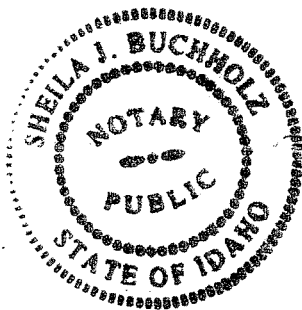
9. Review of the report of latent print identification, and subsequent investigation of Christopher Kevin Hill would likely affect the disposition of Petitioner's Post-Conviction Relief Application and the outcome of the underlying criminal case.

DATED this 19 day of FEBRUARY 2009.


ROBERT J. KERCHUSKY
EXPERT WITNESS FOR PETITIONER

SIGNED AND SWORN before me on the 19th day of February 2009.


Notary Public
My Commission Expires: 8-8-2012




CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of FEB, 2009, a true and correct copy of the foregoing MOTION FOR ORDER OF DISCOVERY RELATING TO NEWLY DISCOVERED EVIDENCE was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

_____ US Mail

_____ Hand Delivery

✓ _____ Via facsimile 208.854.8074 & 208.788.5554



CHRISTOPHER P. SIMMS

ROBERT J. KERCHUSKY

Latent Fingerprint Consultant
1235 N. Echohawk Way
Eagle, ID 83616
FAX*/PH (208) 939-4914

EXPERIENCE:

PRIOR EMPLOYMENT:

June 30, 1996, through current date, working independently as Fingerprint Consultant.

August 25, 1984, through June 30, 1996, employed as the Supervisor of the Identification Section by the State of Idaho, Department of Law Enforcement, Bureau of Criminal Identification, located in Meridian, Idaho.

1. Supervisor of the Identification Section.
2. Latent Fingerprint Examiner for all latent fingerprint work and related duties on a statewide basis.
3. Responded to all major crime scenes throughout the state, when requested by any law enforcement agency.
4. Certificate of Commendation received in September of 1985, for excellence in fingerprints. In 1988, presented with award for outstanding investigative staff. Received 30 or more letters of commendation regarding latent fingerprint work.
5. Testified in the State of Idaho one hundred or more times.

August 1, 1979 to August 1, 1984, Independent Latent Fingerprint Examiner.

November 1, 1969, to August 17, 1979, employed by the Metropolitan Police Department, Washington D.C., as a Latent Fingerprint Specialist. Duties consisted of:

1. Devising appropriate combination of techniques and chemical procedures to fit each assignment.
2. Developing and lifting or photographing of latent impressions.
3. The comparison and identification of the latent prints with known or inked prints.
4. When possible, devising a tentative classification with the latent impressions developed or lifted.
5. Searching the latent through specialized or main files.
6. Developing prints of unknown deceased persons involving the use of delicate techniques in handling decomposed, charred, or water-soaked hands.
7. Preparing and explaining an enlarged photographic chart illustrating the identification.

ROBERT J. KERCHUSKY

Resume

Page 2

8. Gave expert testimony in complicated court cases when due to the importance of the case.
9. Prepared lectures and conducted Crime Scene Search Officer's Classes regarding preservation of evidence and development of latent prints.

Testified in various courts of law as an expert witness regarding latent print identifications, three hundred (300) or more times.

August, 1952, to November, 1969, was employed by the Federal Bureau of Investigation (FBI) Division, receiving six (6) months classroom training and practical fingerprint work with direct supervision. Assignments consisted of seven (7) years of supervising thirty (30) or more subordinate workers regarding fingerprint work.

AWARDS:

Special Service Awards for outstanding performance of duty October, 1972, January, 1973, July, 1976, and April, 1978.

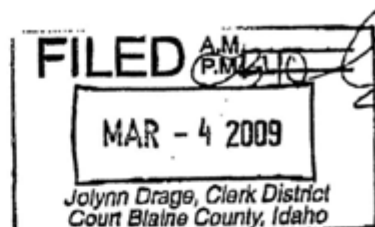
CERTIFICATION:

Certified as a Latent Print Specialist by the International Association for Identification for nineteen (19) years.

Was awarded Life Activated Status from the International Association for Identification on September 25, 2002. This is an achievement to which many strive but few attain.



Christopher P. Simms
Attorney at Law ISB #7473
P.O. Box 3123
Ketchum, Idaho 83340
PH 208 622 7878
FAX 208 622 7921



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No: CV-06-324

ORDER OF DISCOVERY
RELATING TO NEWLY
DISCOVERED EVIDENCE

The Court, having considered Petitioner's Motion for Order of Discovery Relating to Newly Discovered Fingerprint Evidence, heard evidence and argument in support thereof, and good cause appearing therefore, hereby finds Petitioner's substantial rights require discovery relating to newly discovered fingerprint evidence and THEREFORE ORDERS the State to produce the following discoverable materials;

1. Any and all police reports, existing or to be generated regarding each of the below referenced factual matters,
 - a. The Automated Fingerprint Identification System (AFIS) search for match, identification of a match for previously unidentified latent prints found on a rifle scope and an insert from a box of .264 ammunition, both found at the scene of the crime, found on or about January 19, 2009 by the Idaho State Police Bureau of Criminal Identification.
 - b. Confirmation of the above referenced AFIS match of the latent prints by Idaho Police Latent Fingerprint Technicians.
 - c. Background check and records of the person whose prints match the latent prints found at the scene, one Christopher Kevin Hill, DOB [REDACTED]

- d. The Blaine County Sherriff's Office follow-up investigation and interviews.
 - e. High quality copies of photographs and latent lift cards for all latent prints found at the crime scene, and inked fingerprints of Christopher Kevin Hill.
2. Any and all police reports reflecting further investigation of the newly discovered evidence that may have been, or may be generated.

DATED this 4 day of March, 2009.



HON. R. BARRY WOOD, DISTRICT JUDGE



03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 4

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 03/26/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER & HARKINS ph. (208)788-5555
Delivered By:
Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 04/16/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 05/05/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 12/08/2004
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: FULLER/HARKINS ph. (208)788-5555
Delivered By: GREG SAGE ph. (208)788-5555
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/21/2004
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

Evidence Received: 01/20/2005
Add. Crime Date:
How Received: FEDERAL EXPRESS
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S. HARKINS
Delivered By:
Received By: J. HUTCHISON ph. (208)769-1410

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 3

CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 11/20/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: STEVE HARKINS

Delivered By: TINA WALTHALL

Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 12/10/2003

Add. Crime Date:

How Received: CERTIFIED US MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: FULLER / HARKINS ph. (208)788-5555

Delivered By:

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 12/19/2003

Add. Crime Date:

How Received: US MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: STU ROBINSON ph. (208)324-6050

Delivered By:

Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 01/02/2004

Add. Crime Date:

How Received: CERTIFIED US MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: ED FULLER ph. (208)788-5555

Delivered By:

Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 02/06/2004

Add. Crime Date:

How Received: CERTIFIED U.S. MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: FULLER & HARKINS ph. (208)788-5555

Delivered By:

Received By: LINDA FISK ph. (208)884-7170

Evidence Received: 02/09/2004

Add. Crime Date:

How Received: CERTIFIED US MAIL

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: FULLER / HARKINS ph. (208)788-5555

Delivered By:

Received By: MICKEY HALL ph. (208)884-7170

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 2

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 09/25/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: S HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/06/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 10/17/2003
Add. Crime Date:
How Received: US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS/RON TAYLOR ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/10/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 11/17/2003
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 11/18/2003
Add. Crime Date:
How Received: IN PERSON
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS
Delivered By: CYNDI HALL
Received By: LOGGED IN BY J DAVENPORT ph. (208)884-7170

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 1

CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

ORI:

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTSEvidence Received Information

Evidence Received: 09/03/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: RANDY TREMBLE ph. (208)788-3692

Delivered By: RANDY TREMBLE ph. (208)788-3692

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/04/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer:

Delivered By: JD BOWERMAN ph. (208)364-2676

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: RANDY TREMBLE ph. (208)788-3692

Delivered By: MARK DALTON

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/09/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: RANDY TREMBLE ph. (208)788-3692

Delivered By: TINA WALTHALL

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/12/2003

Add. Crime Date:

How Received: FED EX

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: STEVE HARKINS ph. (208)788-5555

Delivered By:

Received By: MICKEY HALL ph. (208)884-7170

Evidence Received: 09/23/2003

Add. Crime Date:

How Received: IN PERSON

Haz. Materials: BIOHAZARD/CHEMICAL

Inv. Officer: STEVE HARKINS ph. (208)788-5555

Delivered By: ED FULLER ph. (208)788-5555

Received By: MICKEY HALL ph. (208)884-7170

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 5

CL Case No.: M20032402 Agency Case No.: 030900016
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI: Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

Evidence Received: 05/05/2005
Add. Crime Date:
How Received: CERTIFIED US MAIL
Haz. Materials: BIOHAZARD/CHEMICAL
Inv. Officer: STEVE HARKINS ph. (208)788-5555
Delivered By:
Received By: JANE DAVENPORT ph. (208)884-7170

Victims and Suspects

<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Subject	JOHNSON, MATTHEW F	12/25/1980		
Subject	LEHAT, ROBIN LYNN	02/11/1964		
Subject	NUXOLL, RUSSELL	06/02/1973		
Subject	SPEEGLE, DELL	09/06/1951		
Subject	SYLTON, JANET	02/03/1959		
Suspect	JOHNSON, SARAH MARIE	01/24/1987		
Suspect	SANTOS - DOMINGUEZ, BRUNO	01/17/1984		
Victim	JOHNSON, ALAN S	03/03/1957		
Victim	JOHNSON, DIANE M	11/30/1950		

< 03/09/2009 Supplemental Information >

EVIDENCE DESCRIPTION:

Item LC (retained evidence) - small evidence envelope containing thirty-nine latent lift cards.
Item PHOTOS (retained evidence) - manila envelope containing seven sets of negatives, fourteen reprints from negative set #4, thirteen photo documentation cards, and sixty-seven digital image printouts.
Evidence was signed and sealed when received.

EXAMINATION:

Three latent prints were previously entered and searched through the Automated Fingerprint Identification System (AFIS) by the ISP Bureau of Criminal Identification where SID #ID10043023, Christopher Kevin Hill, was generated as a possible candidate.

CONCLUSION:

The latent prints marked #2-1, 2-3, 18a-3, & 18b-7b have been positively individualized (identified) to the #3 finger (right middle) of the fingerprint card bearing the name Christopher Kevin Hill.
The latent print marked #2-2 has been positively individualized to the #4 finger (right ring) of the fingerprint card bearing the name Christopher Kevin Hill.
The latent print marked #18a-1 has been positively individualized to the #6

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Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 6

CL Case No.: M20032402
Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY
ORI:

Agency Case No.: 030900016

Crime Date: Sep 2, 2003

Criminalistic Analysis Report - FINGERPRINTS

finger (left thumb) of the fingerprint card bearing the name Christopher Kevin Hill.

The individualizations were effected using a certified copy of a fingerprint card recorded by officer #260 on behalf of the Blaine County Sheriff's Office on 03-01-07.

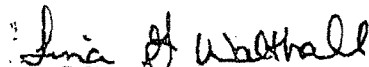
Latents #2-1, 2-2 & 2-3 were recovered from the "rifle scope." Latent 18a-1 was recovered from a live round inside a box of Winchester Super X 264 ammunition. Latent #18a-3 was recovered from the "inside plastic box" of Winchester Super X 264 ammunition. Latent 18b-7b was recovered from "inner plastic box" of Winchester Super X 264 ammunition.

Based on the available exemplars, Christopher Kevin Hill is excluded from being the source of the latent impressions marked #13-4c, 16-1, 18a-5, 18b-4b, 41-6a/41-7c, & 61-1.

The latent prints marked #2-6, 18a-6, & 18b-7a are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to a lack of quantity/clarity in the latent impression.

The latent prints marked #15-1, 17-1, 18a-2, 18b-6, & 20-1 are inconclusive to the available exemplars bearing the name Christopher Kevin Hill. The inconclusive results are due to incomplete known impressions with which to compare, no palms provided, tips not recorded, etc. In order to complete the comparison portion of this examination, it is requested that a quality set of major case prints (palms, fully rolled fingers, sides of fingers, & finger tips) be submitted for Christopher Kevin Hill. Please resubmit items #13 & 41 at that time.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



Tina G. Walthall
Forensic Scientist II, Latent Prints

DATE: 3/10/09

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03/10/2009

Idaho State Police Forensic Services
P.O. Box 700 Meridian, ID 83680-0700 (208)884-7170

Page 7

CL Case No.: M20032402

Agency Case No.: 030900016

Agency: BEPD - BELLEVUE DEPT OF PUBLIC SAFETY

Crime Date: Sep 2, 2003

ORI:

Criminalistic Analysis Report - FINGERPRINTS

A F F I D A V I T

STATE OF IDAHO)

} ss.

COUNTY OF ADA)

Tina G. Walthall, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist II, Latent Print examiner with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the Best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

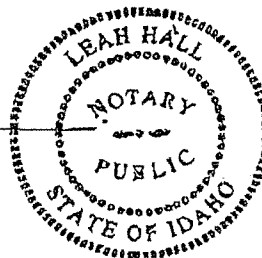
Tina G. Walthall

Tina G. Walthall

Forensic Scientist II, Latent Prints

Date: 3/10/09SUBSCRIBED AND SWORN TO BEFORE ME 3/10/09Leah Hall

Notary Public, State of Idaho

Commission Expires: 4/6/1340028-PC
545



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - INITIAL REPORT

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 2

Incident Case Number BCSO0902-0028 Report Title AFIS INFO FROM ISP LAB
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/11/2009 08:13 AM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code OFF CSA COMMITTED Location RESIDENCE/HOME
Description OFFICER REPORT



Person

Person Type WITNESS
Name Type LEGAL Last SPEEGLE First MEL Middle _____
Address Type HOME Address _____ Apartment _____
City BOISE State IDAHO Zip 83703 Phone _____
DOB _____ Age 57 Sex MALE Race WHITE Height 509 Weight 190
Hair Color BROWN Eye Color BROWN Driver License _____ State IDAHO

Person Type ADDITIONAL PERSON
Name Type LEGAL Last HILL First CHRISTOPHER Middle K
Address Type HOME Address _____ Apartment _____
City BELLEVUE State IDAHO Zip 83313 Phone _____
DOB _____ Age 52 Sex MALE Race WHITE Height 600 Weight 200
Hair Color GRAY/PARTIALLY GRAY Eye Color BLUE Driver License _____ State IDAHO

Property

Item No 2 Code _____ Article NONE Make _____ Model _____
Description EXHIBIT #1 IS DESCRIBED AS A Serial No _____ QTY _____ Value _____
Item No 3 Code _____ Article NONE Make _____ Model _____
Description EXHIBIT #2 IS DESCRIBED AS A Serial No _____ QTY _____ Value _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCSO0902-0028
Johnson Homicide- Case #- BCSO 0309-0016

Identification of fingerprint from the Automated Fingerprint Identification System 'AFIS'

Officer 163 HARKINS, STEVE Report Date 2/11/2009
Supervisor Review 163 HARKINS, STEVE Review Date 2/17/2009
Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE

CASE - INITIAL REPORT

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 2 of: 2

On 2-10-09 I was notified by Sheriff Femling that a fingerprint had been identified by AFIS on a piece of evidence in the Johnson homicide investigation that occurred in September of 2003. Randy Parker, a supervisor from the Idaho State Laboratory in Meridian, Idaho, notified Sheriff Femling he had received information that a previously unidentified fingerprint found on the rifle scope of the murder weapon now had been identified to a person in the AFIS system. This person was identified as Christopher Kevin Hill [REDACTED]

On 2-10-09 I began a background check on Hill. From a previous arrest for a driving without privileges charge on 3-1-2007, I learned he listed the address of #46 East Magic Road in Blaine County. Prior to that he was arrested for DUI on 12-5-02 and listed an address of 614 South Main Street in Bellevue, Idaho. I know that 614 South Main Street is the address to the Buckhorn Electric Company. I know that the Buckhorn Electric Company was previously owned by Mel Speegle, a key witness in the Johnson homicide investigation who lived in the Johnson guest house.

See included jail booking reports and criminal history printout for Hill.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

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Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 3

Incident Case Number BCSO0902-0028 Report Title INTERVIEW OF MEL SPEEGLE
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/11/2009 12:01 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCSO0902-0028
Johnson Homicide- Case #- BCSO 0309-0016

Interview of Mel Speegle

On 2-10-09 I contacted Mel Speegle by telephone. It should be noted that Speegle was a witness in the Johnson Homicide Investigation and was the person who lived in the Johnson guest home at the time of the murders. After learning that a fingerprint had been identified on a piece of evidence in the Johnson investigation by 'AFIS' belonging to Christopher Hill, I began an investigation. (See initial report). Christopher Hill listed an address of a former business owned by Mel Speegle, Buckhorn Electric. I called Speegle to set up an interview with him. During the short phone conversation, I asked Speegle if he knew a subject named Christopher Hill. Speegle told me he did and he had been a friend of his for many years. Speegle also mentioned that Hill had rented a room from him at a former residence, 116 Freedman Lane. This was his residence before he moved into the Johnson guest house in 2002. Speegle also explained Hill helped him move his personal items from his former residence into the Johnson guest house. I arranged to meet with Speegle the following morning.

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

548

000005-1 PC



Blaine County Sheriff
1650 Aviation Drive
Halley, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 2 of: 3

On 2-11-09 at approximately 0930 hours I met with Speegle in an interview room at the Blaine County Sheriff's Department. There, I explained to Speegle the reason why I was inquiring about Hill. I informed Speegle that a fingerprint identified to Hill had been identified on a piece of evidence from the Johnson Homicide Case. Specifically, I told Speegle Hill's print had been identified on the rifle scope that had been found on his bed in the guest house after the murders. Speegle explained he has known Hill for approximately 15 to 20 years and was first introduced to him by his wife. He explained his wife had been family friends with Hill prior to their marriage. Speegle described Hill as a good person and a distant friend and he has not had contact with him in three to four years. Speegle explained before he moved into the Johnson guest house he owned the home south of Bellevue, Idaho. He estimated that Hill resided at this house for approximately three years, from 1999 to 2002. Speegle recalled moving into the Johnson guest house in September of 2002, after selling the above residence. During those three years, Hill resided and performed caretaking duties for him. Speegle never recalled an issue or problem with Hill's character or responsibilities. Speegle explained that Hill helped him move many of the items to his new family home in Boise, Idaho. I asked Speegle specifically about the guns and ammunition that had been found during the search of the Johnson guest house and if they had been previously kept in his residence on Freedman Lane. Speegle confirmed that all the guns and ammunition were that of the same that they had moved. Speegle explained he did not move the guns and ammunition to his new Boise residence because he did not reside there full time with his family. Furthermore, Speegle did not want unsecured guns and ammunition at the new house where only his wife and younger son lived. Because of this, Speegle moved the guns and ammunition into the Johnson guest house.

Speegle told me he recalled Christopher Hill helping him move the guns and boxes of ammunition into the Johnson's guest house sometime in approximately 2002. Specifically, Speegle recalled one of the guns being the 264 Caliber Winchester rifle and scope. It should be noted that this was the murder weapon used in the Johnson homicides. Speegle explained this is why Hill's fingerprints were found on the guns or ammunition. Speegle did not know of any involvement between Allen or Diane Johnson and Hill, socially or business related. He did not believe they knew one another. Speegle recalled that once he moved out of his house and into the Johnson's guest house, he recalled Hill stopping by on one occasion. He remembered this a short visit and that Hill just stopped by to say, "hello". I concluded the interview with Speegle.

This interview was recorded and will be contained on a DVD.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution

549
000006-PC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 1

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 3 of: 3

Officer 163 HARKINS, STEVE

Report Date 2/11/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/17/2009

Distribution _____

550
000007-PC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 2

Case Number
BCSO0902-0028

Date: 02/27/2009

Page: 1 of: 2

Incident Case Number BCSO0902-0028 Report Title INTERVIEW WITH CHRISTOPHER HILL
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/12/2009 11:39 AM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: BCSO-0902-0028
Johnson Homicide Investigation
Interview of Christopher Hill

On 2-12-09 I interviewed Christopher Hill at the Blaine County Sheriff's Department. The interview occurred in an interview room. I explained to Hill that his fingerprint was found on a piece of evidence from the Johnson homicide case. Hill explained he is family friends with Mel Speegle and his wife, Helen Speegle and therefore he knew who the Johnson's were. Hill told me he lived with Speegle at a residence on Freedman Lane in early 2000 or 2001. Hill explained he helped Speegle move personal items from his residence on Freedman Lane to a new residence in Boise, Idaho. Hill also recalled handling the weapons that Speegle owned, specifically the 22 caliber and 264 caliber rifles.

Hill told me he remembered taking the 264 caliber rifle to a rifle range and shooting it. He estimated this occurred sometime during the time he lived at the Freedman residence. From my investigation, I know this would have been prior to the Johnson homicides. Hill explained he attempted to sight the rifle in and is quite sure he touched the scope during this process. Therefore, Hill knows this

Officer 163 HARKINS, STEVE

Report Date 2/12/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/10/2009

Distribution _____

551
000008- PC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 2

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 2 of 2

is why his fingerprint was found on the rifle scope.

Hill remembered meeting the Johnson's at their residence. Hill was introduced to the Johnson's by Mel Speegle. This only occurred once and was only a brief encounter.

This interview was recorded and is contained on a DVD.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/12/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/10/2009

Distribution _____

552
000009 - PC



Blaine County Sheriff
1650 Aviation Drive
Hailey, ID 83333
(208)-788-5555

BLAINE COUNTY SHERIFFS OFFICE
CASE - SUPPLEMENTAL REPORT 3

Case Number
BCS00902-0028

Date: 02/27/2009

Page: 1 of: 1

Incident Case Number BCS00902-0028 Report Title ISP LAB INFO
Date/Time Occurred 2/3/2009 04:00 PM Report Date/Time 2/17/2009 12:26 PM
Name/Business Name _____ Incident Location 1650 AVIATION DR, HAILEY, ID
Case Clearance NOT APPLICABLE Case Clearance Date 2/11/2009

Offense

Offense Code _____ CSA _____ Location _____
Description _____

Person

Person Type _____
Name Type _____ Last _____ First _____ Middle _____
Address Type _____ Address _____ Apartment _____
City _____ State _____ Zip _____ Phone _____
DOB _____ Age _____ Sex _____ Race _____ Height _____ Weight _____
Hair Color _____ Eye Color _____ Driver License _____ State _____

Narrative/Summary

Narrative Blaine County Sheriff's Department
Report of Investigation
Detective Harkins

RE: Case #- BCS00902-0028
Johnson Homicide- Case #- BCS0 0309-0016

I have spoken with Randy Hall from the Idaho State Lab. Hall informed me the laboratory report concerning the fingerprint found on the piece of Johnson evidence is not completed as of 2-17-09. Once this report is completed, it will be sent immediately. Once I receive this report, I will forward them to the Blaine County Prosecuting Attorney's Office.

Detective Harkins

Officer 163 HARKINS, STEVE

Report Date 2/17/2009

Supervisor Review 163 HARKINS, STEVE

Review Date 2/10/2009

Distribution _____

553
000010-PC

DR -- From: USER

TXT: OLN/ [REDACTED]

MAY BE THE SAME AS: PAGE 01 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
OLN/ [REDACTED] STICKER/ . PRIVACY FLAG.
NAM/SPEEGLE, DELL. ** OPR STATUS/VALID.
RES/ [REDACTED] ** CDL STATUS/NOT LICENSED.
[REDACTED] CLASS/D. ** EXP/09-06-2012.
BOISE ID 83703. OLT/DRIVER LICENSE.

** REST/LENSES. END/MCY.
SEX/M. HAI/BRO. EYE/BRO. DOB [REDACTED] SOC [REDACTED] 1. ORGAN DONOR
HGT/509. WGT/180. ISS/10-30-2006. REC/070063030029. CNTY/BLAI.

AKA OLN/ [REDACTED] AKA OLS/ID.
CITN/12-19-2000C. 04-27-2000A.INATT DRVNG. ISP.ADA.
ORD DEGREE/MISD.
END OF RECORD
END OF MESSAGE...

MRI 1870552 IN: DMVIO1 8268 AT 12:15 17FEB09
OUT: SBLAZZ02 33 AT 12:15 17FEB09

#####

163

554

000011-R

<OFML>

<HDR>

<ID>WS27</ID>

<DAC>SBLAZZ02</DAC>

<SRC>NCIC</SRC>

<DAT>20090217122219</DAT>

<REF>UNKNOWN</REF>

<MKE>QH</MKE>

<ORI>IDNCIC000</ORI>

<DST>SBLAZZ02</DST>

<CTL>MRI1871381</CTL>

</HDR>

<RSP>

<TXT>

NL01046A,MRI1871381

ID0070000

NO IDENTIFIABLE RECORD IN THE NCIC INTERSTATE IDENTIFICATION INDEX
(III) FOR NAM/SPEEGLE,DELL.SEX/M.RAC/W.DOB/[REDACTED].SOC/[REDACTED].
PUR/C.

NOTICE -- A LARGE NUMBER OF RECORDS FOR PERSONS BORN PRIOR TO 1956 ARE
NOT AUTOMATED AT THE FBI. IF A SEARCH OF THE NONAUTOMATED FILES IS
DESIRED, A FINGERPRINT CARD SHOULD BE SUBMITTED.
END

MRI 1871383 IN: NCIC 7524 AT 12:22 17FEB09

OUT: SBLAZZ02 39 AT 12:22 17FEB09

</TXT>

</RSP>

</OFML>

555

000012-1

IR -- From: USER

TXT: PUR/C.ATN/163 DAC AFIS INV

THE FOLLOWING IS IN RESPONSE TO YOUR INQUIRY ON
NAM/SPEEGLE,DELL .DOB/ .SEX/M.SOC/

*** THE ABOVE NAMED SUBJECT MAY BE THE SAME AS ***
*** OUR IDAHO CRIMINAL HISTORY ON ***

***** NO MATCHING RECORD ON FILE *****

NOTICE -- THE RESPONSE TO YOUR REQUEST FOR A CRIMINAL
HISTORY RECORD CHECK IS BASED ON A REVIEW OF THE STATE
OF IDAHO'S DATA BASE ONLY. THIS DOES NOT PRECLUDE THE
POSSIBLE EXISTENCE OF A RECORD IN A LOCAL AGENCY, -
(SHERIFF'S OFFICE OR POLICE DEPARTMENT), A STATE OTHER
THAN IDAHO OR THE FBI IDENTIFICATION DIVISION FILES.

MRI 1871528 IN: CCH 1080 AT 12:23 17FEB09
OUT: SBLAZZ02 40 AT 12:23 17FEB09

IR -- From: NLET

TXT: IR.ORSIR0000
12:23 02/17/2009 93992
12:23 02/17/2009 08374 ID0070000
*MRI1871527

TXT
PUR/C.ATN/163 DAC AFIS
INV.NAM/SPEEGLE,DELL.DOB/ .SEX/M.RAC/W.SOC/
NO CCH CANDIDATES

MRI 1871529 IN: NLI1 7493 AT 12:23 17FEB09
OUT: SBLAZZ02 41 AT 12:23 17FEB09

554
000013-1

DR -- From: USER

TXT: OLN/[REDACTED]

163

MAY BE THE SAME AS: PAGE 01 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
OLN/[REDACTED] PRIVACY FLAG.
NAM/HILL, CHRISTOPHER KEVIN. ** OPR STATUS/SUSPENDED.
RES/[REDACTED] ** CDL STATUS/NOT LICENSED.
[REDACTED] CLASS/D. ** EXP/12-06-2011.
BELLEVUE ID 83313. OLT/DRIVER LICENSE.

SEX/M. HAI/BRO. EYE/BLU. [REDACTED] SOC/[REDACTED].
HGT/600. WGT/195. ISS/12-06-2007. REC/070073400008. CNTY/BLAI.

AKA OLN/[REDACTED] AKA OLS/ID
CA.

CITN/05-13-2002C. 04-25-2002A.STOP SIGN. CTY.KETCHUM. —
ORD DEGREE/INFR.
SUSP/01-04-2003.UNTL/04-04-2003. ALS08+ORDRUG. REIN FULL.05-28-2004.OP
CSUS/01-05-2003.UNTL/05-05-2003. DUI. FULL.SR22.05-28-2004.OP
CITN/03-07-2003C. 12-05-2002A.DUI. SHR.BLAINE.
ORD DEGREE/MISD.
CSUS/06-03-2004.UNTL/11-30-2004. DWP SUSPEND. FULL.SR22.03-20-2007.OP
CITN/06-07-2004C. 05-09-2004A.DWP SUSPEND. CTY.HAILEY.
ORD DEGREE/MISD.
SUSP/12-30-2004.UNTL/11-30-2007. FAIL MNT INS. FULL.SR22.03-20-2007.OP
CITN/03-02-2007C. 03-01-2007A.DWP SUSPEND. SHR.BLAINE.
ORD DEGREE/MISD.
CSUS/03-02-2007.UNTL/08-29-2007. DWP SUSPEND. FULL.SR22.11-06-2007.OP
CITN/04-25-2007C. 03-01-2007A.N/PF LIA INS. SHR.BLAINE.
ORD DEGREE/INFR.
SUSP/05-14-2007.UNTL/05-13-2008. N/PF LIA INS. FULL.SR22.11-06-2007.OP
SUSP/03-28-2008.UNTL/08-29-2010. FAIL MNT INS. OP
ADDITIONAL LICENSE TYPES CONTINUED ON NEXT PAGE...

MAY BE THE SAME AS: PAGE 02 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
***** IDAHO IDENTIFICATION CARD ONLY - NOT A DRIVERS LICENSE *****

OLN/[REDACTED] PRIVACY FLAG.
NAM/HILL, CHRISTOPHER KEVIN. ID CARD STATUS/EXPIRED.
RES/[REDACTED]

[REDACTED] ** EXP/12-06-2007.
BELLEVUE ID 83313. OLT/IDENTIFICATION CARD.

SEX/M. HAI/BRO. EYE/BLU. DOB/[REDACTED] SOC/[REDACTED].
HGT/600. WGT/185. ISS/12-23-2003. REC/070033570005. CNTY/BLAI.

AKA OLN/[REDACTED] AKA OLS/ID
CA.

END OF RECORD
END OF MESSAGE...

MRI 1870656 IN: DMVIO1 8282 AT 12:15 17FEB09
OUT: SBLAZZ02 37 AT 12:15 17FEB09

557

000014-

#####

SENT MESSAGE:

QH -- HILL, CHRISTOPHER K

Attention: 163 AFIS INV

REQ: BLAINE CSO

ATN: 163 AFIS INV

RON: DCHAPMAN

PUR: C

NAM: HILL, CHRISTOPHER K

DOB: [REDACTED]

RAC: W

SEX: M

SOC: [REDACTED]

#####

ACK -- From: SWITCH

TXT: MESSAGE ROUTED

SBLAZZ02 00030 AT 12:24 02/17/2009

NCIC

MRI-1871584

#####

QH -- From: NCIC

TXT: 7L01046A, MRI1871584

ID0070000

THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/HILL, CHRISTOPHER K SEX/M RAC/W DOB/[REDACTED]

SOC [REDACTED] PUR/C

NAME

FBI NO.

INQUIRY DATE

HILL, CHRISTOPHER KEVIN

868677PC0

2009/02/17

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO

M W [REDACTED] 510 200 BLU GRY N

BIRTH PLACE

UNITED STATES

FINGERPRINT CLASS

PATTERN CLASS

WU WU WU WU RS UC WU WU WU LS

SOCIAL SECURITY

IDENTIFICATION DATA UPDATED 2007/03/15

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

IDAHO - STATE ID/ID10043023

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

163

558

000015-1

Blaine County Sheriff's Office



BOOKING REPORT 0700004186

Location: RELEASED

Booking Number 0700004186 Inmate PIN 25237 Booking Date/Time 03/01/2007 13:22 Scheduled Release 03/02/2007 14:43 Release Date/Time 03/02/2007 14:43 Booking Officer RODRIGUEZ, RENE Entry Officer RODRIGUEZ, REN
Last Name HILL First Name CHRISTOPHER Middle Name KEVIN Name Suffix Juvenile Dispo Language Spoken ☒ Booking Complete
Caution:

PERSONAL INFORMATION

Current Address Home Address SHOSHONE, ID 83352
Phone () Phone ()
Residence IS 7 S.S.N. Drivers License DL ID
State ID No. FBI Other ID DL
Date of Birth Age 52 Sex M Race W Ethnicity N Height 60 Weight 200 Build M
Eyes BLU ☐ Glasses Hair GRY Style S Length S Skin WHITE
Facial F Teeth W Marital Status SINGLE Religion NO PREFERENCE Yrs Ed. 12
Place of Birth Citizenship US Gang

CHARGES

Statute 18-8001 DWP DRIVING W/O PRIVILEGES - IN STATE Level M Degree MIS Type
OBTS Booking Case Arrest Date/Time 03/01/2007 12:39
Arrest Location SH 75 MP 101, BLAINE CO. Arresting Agency ORI ID0070000 ☐ Dom
Arresting Officer CA151 ABSTON, CHASE Arresting Agency Case No.
Warrant Type Warrant Citation
Other Chargeable Offense
End Of Sentence Date: Bond Amount 500 Cash 500 Bond Type SURETY/CAS
Court Case CR-07-652 Court Date Judge Court Venue BLAINE COUNTY
Disposition
Comments \$150.00 FINE3DAYS JAIL SUSPENDED, 3-DAYS-SWP
Cleared 5 Cleared Comments
Statute 49-331(1) 5418 | DRIVERS LICENSE- CANCELLED, FICTITIOUS, Level M Degree MIS Type
MUTILATED, SUSPENDED
OBTS Booking Case Arrest Date/Time 03/01/2007 12:39
Arrest Location SH 75 MP 101, BLAINE CO. Arresting Agency ORI ID0070000 ☐ Dom
Arresting Officer CA151 ABSTON, CHASE Arresting Agency Case No.
Warrant Type Warrant Citation
Other Chargeable Offense
End Of Sentence Date: Bond Amount 121 Cash 121 Bond Type SURETY/CAS
Court Case CR-07-652 Court Date Judge Court Venue BLAINE COUNTY
Disposition
Comments CHARGE DROPPED
Cleared 0 Cleared Comments

HOLDS INFORMATION

SCARS/MARKS/TATTOOS

Code Description Comment

ALIAS INFORMATION

Name DOB SSN

EMPLOYMENT

Employer UNEMPLOYED Address
Phone ()
Occupation COOK How Long ☐ Part Time ☐ Student

VEHICLE

License State ID Veh.Year 1986 Make TOYT Model 4RUNN Style 4D Color BLU
Impound ADVANCED 578-5230 Phone ()
Address ☐ Hold on Vehicle Hold Agency
Comments 560
000017

BOOKING COMMENTS

Blaine County Sheriff's Office

BOOKING REPORT 0700004186

Location: RELEASED



LEGAL REPRESENTATION

Attorney Name

Phone ()

☐ Phone Call Made

NEXT OF KIN

FRIEND

Name RICK NORRIS
Home Phone ()
Work Phone ()

Address OWNS EAST MAGIC RESORT
EAST MAGIC RD
MAGIC, ID

Officer Signature

Inmate Signature

561

000018

Blaine County Sheriff's Office



BOOKING REPORT 0200000092

Location: RELEASED

Booking Number 0200000092 Inmate PIN 25237 Booking Date/Time 12/05/2002 20:52 Scheduled Release 12/05/2002 21:56 Release Date/Time 12/05/2002 21:56 Booking Officer WILLIAMS, ROBERT Entry Officer WILLIAMS, ROBE
Last Name HILL First Name CHRISTOPHER Middle Name KEVIN Name Suffix Juvenile Dispo Language Spoken ☐ Booking Compl

Caution:

PERSONAL INFORMATION

Current Address [REDACTED] Home Address [REDACTED]
[REDACTED] BELLEVUE, ID 83313 [REDACTED] BELLEVUE, ID 83313
Phone () Phone (208) 788-7836
Residence IS 4 S.S.N. [REDACTED] Drivers License [REDACTED] DL ID
State ID No. FBI Other ID DL
Date of Birth [REDACTED] Age 52 Sex M Race W Ethnicity N Height 6-0 Weight 200 Build M
Eyes BLU ☐ Glasses Hair GRY Style S Length S Skin WHITE
Facial N Teeth W Marital Status SINGLE Religion Yrs Ed.
Place of Birth ORANGE CA Citizenship US Gang

CHARGES

Statute 18-8004 DUI Level Degree Type M
OBTS Booking Case Arrest Date/Time 12/05/2002 20:04
Arrest Location MAIN-CHESTNUT BELLEVUE Arresting Agency ORI ID0070000 ☐ Dom
Arresting Officer BG154 GELSKEY, BRAD Arresting Agency Case No.
Warrant Type Warrant Citation
Other Chargeable Offense
End Of Sentence Date: Bond Amount 500 Cash 0 Bond Type SURETY
Court Case Court Date 12/16/2002 Judge RJE Court Venue
Disposition
Comments
Cleared 2 Cleared Comments

HOLDS INFORMATION

SCARS/MARKS/TATTOOS

Code Description Comment

ALIAS INFORMATION

Name DOB SSN

EMPLOYMENT

Employer Address
Phone
Occupation How Long ☐ Part Time ☐ Student

VEHICLE

License State Veh. Year Make Model Style Color
Impound Phone
Address ☐ Hold on Vehicle Hold Agency
Comments

BOOKING COMMENTS

LEGAL REPRESENTATION

Attorney Name Phone ☐ Phone Call Made

NEXT OF KIN

542

000019PC

Blaine County Sheriff's Office

BOOKING REPORT 0200000092

Location: RELEASED



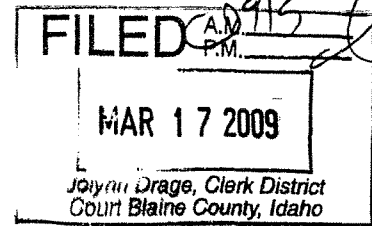
Officer Signature

Inmate Signature

563

0000201

Christopher P. Simms
Attorney at Law ISB #7473
P.O. Box 3123
Ketchum, Idaho 83340
PH 208 622 7878
FAX 208 622 7921



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO
IN AND FOR THE COUNTY OF BLAINE

SARAH M. JOHNSON,	)	Case No: CV-06-324
)	
Petitioner,	)	MEMORANDUM OF LAW
	)	IN SUPPORT OF PETITION
vs.	)	FOR POST-CONVICTION
	)	RELIEF
STATE OF IDAHO,)	
)	
Respondent,)	

COMES NOW PETITIONER, through her attorney of record, Christopher P. Simms, and files this, her Memorandum of Law in Support of First Amended Petition for Post-Conviction Relief and in support thereof states as follows;

INTRODUCTION

1. Petitioner initially filed her Petition for Post Conviction Relief, in Blaine County, on or about April 19, 2006 following her conviction, in Blaine County, on two counts of Murder in the First Degree, with firearm enhancement, in Case No. CR-2003-001820, for which she was sentenced on or about June 30, 2005. Petitioner is serving a life term in Pocatello Women's Correctional Center. Petitioner's trial counsel failed to timely file notice of appeal, and therefore her direct appeal was initially dismissed as untimely. Relief was granted pursuant to the initial Petition for Post-Conviction Relief, timely filed with this Court on April 19, 2006, in the form of allowing the direct appeal to proceed.

The Idaho Supreme Court, on June 26, 2008, affirmed Petitioner's Conviction in State v. Johnson, Case No. 33312, which decision can be found at 188 P.3d 912 (ID 2008). The unresolved issues contained in Petitioner's Post-Conviction action had were stayed during pendency of the direct appeal. On or about November 5, 2008 the parties stipulated and the Court Ordered Petitioner's Amended Petition for Post-Conviction Relief filed by March 16, 2009. This Memorandum is filed in support thereof and by reference made a part of said Amended Petition. Petitioner reserves the right to submit additional memorandum of law in support of her arguments for relief as facts and issues develop.

2. Petitioner bases her Amended Application for Post Conviction Relief upon the following:

- (a) The District Court was without jurisdiction to try, convict and sentence Petitioner.
- (b) Petitioner is innocent of the offense.
- (c) Violations of Petitioner's Constitutional Right to Due Process of Law.
- (d) Ineffective Assistance of Counsel, both at Trial and on Direct Appeal.
- (e) Discovery of new evidence.

3. The First Amended Petition for Post-Conviction Relief, filed herewith is timely and meritorious, and together with the supporting affidavits, documents, motions for Orders of Discovery, and verified factual and legal contentions contained therein, create genuine issues of material fact such that summary disposition cannot be entered and the matter must be set for trial. While there exists a judgment presumed to be valid,

Petitioner has on the face of the pleadings and documents filed herewith overcome said presumption such that Petitioner is entitled to a new trial.

4. Petitioner has maintained her innocence as to the charges in the underlying criminal matter, before, during and after her trial, conviction and sentence, and continues to deny any involvement with the crime.

TRIAL COURT LACKED JURISDICTION

5. The Uniform Juvenile Corrections Act, I.C. 20-501 et seq. provides for the exclusive jurisdiction of persons under eighteen years old. Petitioner recognizes that I.C. 20-509 provides for adult criminal prosecution of juveniles, age fourteen (14) to age eighteen (18), who are alleged to have committed murder. However, section 20-508, on its face, affords all juveniles the right to "...full investigation, a hearing..." and the discretion of a Magistrate to waive jurisdiction under the juvenile corrections act over the juvenile and order that the juvenile be held for adult criminal proceedings when a juvenile is alleged to have committed any of the crimes enumerated in section 20-509, Idaho Code. Without question Petitioner was charged with murder, one of the enumerated offenses, but no waiver hearing occurred, no investigation occurred, nor did a Magistrate order Petitioner held for adult criminal proceedings.

Petitioner acknowledges the Idaho case law that refers to the procedure culled from the interplay of I.C. section 20-508 and 20-509 as "automatic waiver." This automatic waiver concept has developed into a prosecutorial and judicial practice of disregarding performance of the procedural steps of "full investigation" "hearing" and "order that the juvenile be held for adult criminal proceedings." However, Petition herein asserts that such practice is unconstitutional in violation of her right to due process of law

under the Idaho and Federal constitutions. Candor to this tribunal requires citation to State v. Burnright, 132 Idaho 654 (Idaho Supreme Court of Idaho 1999), and; State v. Kavaiecz, 139 Idaho 482, 80 P.3d 1083, addressing. However, the United States Supreme Court opinion in Kent v. United States, 383 U.S. 541, 562, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), cannot be ignored. In Kent The Supreme Court held that the juvenile had a due process and Sixth Amendment right to a hearing, and a statement of the reasons for the juvenile judge's decision to transfer the case. Kent at 557.

VIOLATIONS OF DUE PROCESS

JUDICIAL BIAS

6. Petitioner alleges, supported by affidavit of trial co-counsel, the trial judge independently apprised himself of the facts and background of the case, specifically by reading the Grand Jury Transcript and Police Reports, as well as by visiting the scene of the crime. Petitioner further asserts that by independently apprising himself, in an extrajudicial manner, of the background and facts of the case, the Judge created in himself a bias against Petitioner. Petitioner thus concludes that her right to due process of law, in obtaining a fair trial, has been violated. Petitioner's Trial Counsel failed to file a Motion to Disqualify, but had such a motion been filed it should have been granted, and if granted it is reasonably likely that Petitioner would have been acquitted of the charges against her.

The law in this arena as declared in the State of Idaho is reasonably clear. A motion for disqualification should be granted only where there is actual prejudice against the litigant of such a nature as to render it improbable that the presiding judge could or would give the litigant a fair and impartial trial. State v. Waterman, 36 Idaho 259, 210 P.

208 (1922); State v. Pizzuto, 119 Idaho 742, 776, 810 P.2d 680, 714 (1991). To be disqualifying, the bias or prejudice "must stem from an extrajudicial source and result in an opinion on the merits on some basis *other than what the judge learned from his participation in the case.*" Desfosses v. Desfosses, 120 Idaho 27, 29, 813 P.2d 366, 368 (Ct.App.1991), quoting United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778 (1966). (emphasis added) This has come to be known as the extrajudicial source doctrine. Liteky v. United States, 510 U.S. 540 (1994)

The case law is clear that bias or prejudice developed in participating in the case is to be expected, and is not disqualifying. Here, His Honor, not only gained information and an opinion on the merits of the case from his presiding over the presentation of evidence, but from information gained outside permissible participation in the case. The Commentary to Idaho Code of Judicial Conduct Canon 3 paragraph (7) makes clear "A judge must not independently investigate facts in a case and must consider only the evidence presented." In the case before the Court, it is alleged that His Honor gained extrajudicial information. The United States Supreme Court has made clear, distinct and inconsistent with Idaho Courts, that it is the appearance of bias may enough to trigger conflict with the due process of law.

In Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813, 106 S.Ct. 1580 (1986) the Court stated,

More than 30 years ago Justice Black, speaking for the Court, reached a similar conclusion and recognized that under the Due Process Clause no judge "can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." In re Murchison, 349 U.S. 133, 136 (1955). He went on to acknowledge that what degree or kind of interest is sufficient to disqualify a judge from sitting "cannot be defined with precision." Ibid. Nonetheless, a reasonable formulation of the issue is whether the "situation is one 'which would offer a

possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." Ward v. Village of Monroeville, supra, at 60...and

We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama "would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." Ward, 409 U.S., at 60 (quoting Tumey v. Ohio, supra, at 532). The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, 'justice must satisfy the appearance of justice.'" Murchison, 349 U.S., at 136 (citation omitted).

This same rule of law was announced earlier in Ward v. Village of Monroeville, 93 S.Ct. 80, 409 U.S. 57 (1972) when the Court held "Petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment where he was compelled to stand trial for traffic offenses before the mayor, who was responsible for village finances and whose court through fines, forfeitures, costs, and fees provided a substantial portion of village funds," citing Tumey v. Ohio, 273 U.S. 510. The Court reasoned that a statute allowing disqualification of interested or biased judges did not afford petitioner a sufficient safeguard, nor was a subsequent trial denovo a sufficient safeguard in the face of the appearance of impropriety. Here, the appearance of bias and prejudice is confirmed by Canon 3 of the Idaho Code of Judicial Conduct, unless His Honor denies Trial Co-Counsel's sworn statement.

VIOLATION OF CONFRONTATION CLAUSE

7. In Davis v. Alaska, 415 US 308, the US Supreme Court articulated the modern interpretation of the Sixth Amendment's guarantee to the right of an accused in a criminal prosecution "to be confronted with the witnesses against him."

This right is secured for defendants in state as well as federal criminal proceedings under Pointer v. Texas, 380 U.S. 400 (1965). Confrontation means more than being allowed to confront the witness physically. Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination. Douglas v. Alabama, 380 U.S. 415, 418 (1965). Professor Wigmore stated: "The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. The opponent demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers." 5 J. Wigmore, Evidence 1395, p. 123 (3d ed. 1940). (Emphasis in original) Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i. e., discredit, the witness. One way of discrediting the witness is to introduce evidence of a prior criminal conviction of that witness. By so doing the cross-examiner intends to afford the jury a basis to infer that the witness' character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony. The introduction of evidence of a prior crime is thus a general attack on the credibility of the witness. A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is "always relevant as discrediting the witness and affecting the weight of his testimony." 3A J. Wigmore, Evidence 940, p. 775 (Chadbourn rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Greene v. McElroy, 360 U.S. 474, 496 (1959).

In Davis, the Court reversed the trial prohibition against impeachment of a witness relating possible bias deriving from the witness' probationary status as a juvenile delinquent. The Court held that Petitioner's right of confrontation is paramount to the State's policy of protecting juvenile offenders and any temporary embarrassment to Green by disclosure of his juvenile court record and probation status is outweighed by petitioner's right effectively to cross-examine a witness. Davis, at 319-320. The defense was entitled to attempt to show that Green was biased because of his vulnerable status as

a probationer and his concern that he might be a suspect in the burglary charged against petitioner, and limiting the cross-examination of Green precluded the defense from showing his possible bias. *Id.* at 315-318.

The Supreme Court reiterated the limits of the constitutional right in Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431 (1986) but stopped short of reversing conviction finding error but no prejudice. The Court was split with a vigorous dissenting opinion published by Justice Marshall urging outright reversal. While declining to reverse the Court did express the following rule as to proper gauge of prejudice,

The State somewhat tentatively suggests that a defendant should have to show "outcome determinative" prejudice in order to state a violation of the Confrontation Clause: Unless the particular limitation on cross-examination created a reasonable possibility that the jury returned an inaccurate guilty verdict, that limitation would not violate the Confrontation Clause. We disagree. While some constitutional claims by their nature require a showing of prejudice with respect to the trial as a whole, see, e. g., *Strickland v. Washington*, 466 U.S. 668 (1984) (ineffective assistance of counsel), the focus of the Confrontation Clause is on individual witnesses. Accordingly, the focus of the prejudice inquiry in determining whether the confrontation right has been violated must be on the particular witness, not on the outcome of the entire trial. It would be a contradiction in terms to conclude that a defendant denied any opportunity to cross-examine the witnesses against him nonetheless had been afforded his right to "[confrontation]" because use of that right would not have affected the jury's verdict. We think that a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby "to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness." *Davis v. Alaska*, *supra*, at 318.

Van Arsdall, at 679-80. The Court did however set forth "...the principle that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." *id.* at 681. Thus, it appears the proper inquiry here is (1) whether Petitioner was

prohibited from engaging in otherwise appropriate cross-examination and (2) if constitutional error occurred can this court say beyond a reasonable doubt, that the error was harmless.

This Court, in addressing the State's Motion in Limine, seeking to prohibit cross-examination of Bruno Santos, ruled generally that Trial Counsel would be severely limited in his inquiry of Bruno Santos. As a result of the limitation imposed Trial Counsel did not engage in cross-examination of this witness, at all. A close examination of the record reveals that Mr. Santos was known to be involved in drug activity; had been found under the Juvenile Corrections act to have committed a violent crime; was arrested on October 30, 2004 and possibly on other occasions; had been, as an adult, engaged in sexual intercourse with the Petitioner, a minor, subjecting himself to statutory rape charges and a potential sentence of life in the penitentiary; was facing a felony drug charge that was set for jury trial subsequent to the trial of Petitioner; and that a cooperation agreement of some sort existed between Santos and the State. The Court ruled against Petitioner on each of the above referenced items of inquiry relying on the idea that if Santos was going to invoke his Fifth Amendment right to remain free of compulsory self-incrimination, he could not be forced to submit to questioning. (*See* Transcript Pg. 2755) Clearly, Petitioner was deprived of her right to expose a prosecution witness's possible bias and motive for testifying so the jury could make an informed judgment as to the weight to be given the witness's testimony.

The Ninth Circuit Court of Appeals has taken a more refined approach and employs a three part balancing test. In *United States v. Larson*, 495 F.3d 1094 (9th Cir. 2007), three factors were considered in determining whether a defendant's Confrontation

Clause right was violated through limited cross-examination: "(1) [whether] the excluded evidence was relevant; (2) [whether] there were other legitimate interests outweighing the defendant's interest in presenting the evidence; and (3) [whether] the exclusion of evidence left the jury with sufficient information to assess the credibility of the witness." *Id.* at 1103 [quoting *United States v. Beardslee*, 197 F.3d 378, 383 (9th Cir. 1999)] The court then weighed the probative value of the omitted mandatory minimum sentence information against other legitimate governmental interests, such as a desire to prevent the jury from inferring the potential sentence faced by the defendant. *Id.* at 1104-05. The Court held that the Confrontation Clause was violated by a limitation on the cross-examination of a witness who had been facing a mandatory sentence of life imprisonment until agreeing to cooperate with the government. Even though the defense had elicited testimony that this witness was a drug addict and dealer, had been convicted of seven felonies, and was cooperating with the State in the hope that the prosecutor would reduce his sentence, the Ninth Circuit concluded that this admitted evidence alone "did not reveal the magnitude of his incentive to testify to the Government's satisfaction," *Id.* at 1105. (as paraphrased from State v. Ruiz, 2009-ID-0220,148)

In the case before the Court the Petitioner was prohibited from any and all inquiry based on a generalized concern for a witness' Fifth Amendment rights. Clearly, the line of questioning on the subject matters listed was relevant to Santos' tendency toward bias, credibility and prejudice and to expose the jury to facts from which to draw inferences relating the reliability of the witness. What interest does the State have in relieving the witness from scrutiny when the witness could have asserted his right to remain silent in response to direct inquiry? Here, the witness was improperly shielded from all inquiry,

thereby leaving the jury with no information with which to judge the credibility of Santos.

The Supreme Court of Idaho reached a conclusion supporting Petitioner's desired result in State v. Gomez, 137 Idaho 671, 52 P.3d 315 (2002). In Gomez the Court found cross-examination regarding witnesses growing marijuana in their home, known to police but not charged, should have been allowed. The Idaho Supreme Court held the Trial Court had improperly applied I.R.E. 403, and found this to be the type of cross-examination that is routinely allowed to determine whether witness' have a motive to testify that may bring their credibility into question. Gomez, at 675. Similarly, the inquiry on the above referenced subjects should have been permitted. The jury was left with no specific ability to judge the credibility of Santos, who should have been facing life in the penitentiary but for the State's choice not to prosecute. Furthermore, but for the State's prosecutorial discretion Santos would have been facing felony trafficking charges. These are exactly the sort of facts the juror should have had to determine Santos motivation.

INEFFECTIVE ASSISTANCE OF COUNSEL

LACK OF DILIGENCE

8. Petitioner asserts that Trial Counsel Pangburn simply lacked the required perseverance required of counsel similarly situated. According to sworn statements of individuals with personal knowledge Mr. Pangburn was chronically unprepared and tardy in his duties. The result of this constant lack of diligence was that Petitioner was convicted of murdering her parents, when she should have been acquitted of these terrible crimes. The Supreme Court of Idaho in State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975)

referred to the Idaho Rules of Professional Conduct (IRPC) for guidance. "We note that these standards are intended as guides for conduct of lawyers and as the basis for disciplinary action, not as criteria for judicial evaluation of the effectiveness of counsel, [citing the ABA Standards, "The Defense Function" § 1.1 (f) (1971)]. However, these standards certainly are relevant to this largely unexplored area. If the standards are intended to be a guide by which the conduct of counsel is to be judged on a disciplinary proceeding, these standards should also be considered when a court is called upon to judge counsel's conduct in terms of the defendant's constitutional rights."

Rule 1.3 instructs that "A lawyer shall act with reasonable diligence and promptness in representing a client." I.R.C.P. 1.3. Lead Trial Counsel, Bobby Eugene Pangburn, acted neither diligently or promptly in his representation of Petitioner. This allegation is evident upon a review of the record, and indicated by the fact that Pangburn uniformly failed to provide the defense team with discovery in a timely fashion. (See Affidavit of Patrick Dunn) Comments [2] and [3] of Rule 1.3 summarize the habitual faults of Trial Counsel that resulted in incompetency. "A lawyer's workload must be controlled so that each matter can be handled competently," and "Perhaps no professional shortcoming is more widely resented than procrastination." Instead of diligently applying himself to trial preparation Mr. Pangburn was preparing himself for media appearances. Mr. Pangburn is currently suspended from the practice of law in both Idaho and Oregon because he took on more than he could handle and procrastinated matters upon which his client's life depended.

GENERAL STANDARDS FOR JUDGING INEFFECTIVE ASSISTANCE OF
TRIAL COUNSEL

9. The standards and criteria used to analyze a constitutional claim of ineffective assistance of counsel are well known and often repeated in the case law. The recent Idaho Appellate Court decision in Murphy v. State, 143 Idaho 139 at 747-48, 139 P.3d 741 (2006) included a clear statement of the law in a case with facts analogous to those in the instant matter.

In order to prevail on a claim of ineffective assistance of counsel, the post-conviction applicant must demonstrate both that her attorney's performance was deficient, and that she was thereby prejudiced in the defense of the criminal charge. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct.App.1989). To show deficient performance, a defendant must overcome the strong presumption that counsel's performance was adequate by demonstrating "that counsel's representation did not meet objective standards of competence." *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03. See also *Vick v. State*, 131 Idaho 121, 124, 952 P.2d 1257, 1260 (Ct.App.1998). If a defendant succeeds in establishing that counsel's performance was deficient, she must also prove the prejudice element by showing that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 697. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* The benchmark for judging a claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* at 686, 104 S.Ct. at 2064, 80 L.Ed.2d at 692. It is well established that we will not attempt to second-guess trial counsel's strategic decisions unless those decisions are made upon the basis of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation. *State v. Perez*, 99 Idaho 181, 184-85, 579 P.2d 127, 130-31 (1978); *State v. Tucker*, 97 Idaho 4, 10, 539 P.2d 556, 562 (1975). Inadequate preparation prior to trial may be sufficient to show deprivation of the right to effective assistance of counsel. *Tucker*, 97 Idaho at 10, 539 P.2d at 562. Strategic choices made after incomplete investigations are reasonable only so far as reasonable professional judgments support the limitations on investigation. *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 2541, 156 L.Ed.2d 471, 492 (2003); see also *Rompilla v. Beard*, 545 U.S. 374, 125 S.Ct. 2456, 2463, 162 L.Ed.2d 360, 372 (2005) (failure to investigate material relied upon by prosecution was unreasonable); *Williams v. Taylor*, 529 U.S. 362,

396, 120 S.Ct. 1495, 1514, 146 L.Ed.2d 389, 419 (2000) (unreasonable failure to conduct thorough investigation); *Burger v. Kemp*, 483 U.S. 776, 794, 107 S.Ct. 3114, 3125, 97 L.Ed.2d 638, 657 (1987).

In addition to those standards and criteria referenced by the Murphy Court it should be noted that evaluating an ineffective assistance of counsel claim requires a close examination of the evidence, both the evidence which was admitted during trial and that which was not. Milburn v. State, 130 Idaho 649 at 653, 946 P.2d 71 (Idaho App. 1997) Furthermore, in assessing the potential prejudice the Court will consider in aggregate the various decisions and omissions of defense counsel that are alleged to have been unreasonable. The Court should also take into account the totality of the evidence that was before the jury in the criminal trial. Milburn at 653. The Milburn Court recognized that a lawyer does not have the duty to interview all potential witnesses, but under some circumstances such a failure can constitute a deficiency in representation. The Court cautioned that each case must be judged according to the significance of the evidence each witness has to offer. Id at 654.

FAILURE TO MOVE FOR CONTINUANCE UPON LATE DISCLOSURE OR
OTHERWISE PROPERLY PREPARE FOR FORENSIC EXPERT CROSS-
EXAMINATION & PRESENTATION OF EVIDENCE

10. Petitioner complains that lead Trial Counsel, in addition or in the alternative, to failing to move for a continuance upon late disclosure of forensic evidence discovery, simply failed to prepare to meet the applicable standard in dealing with expert evidence issues. These failures included failure to properly prepare to cross-examine the State's forensic experts, as well as presentation of defense experts. Trial Counsel was so unprepared that he was unable to have introduced into evidence his own expert ballistic tests. Trial Counsel presented himself so far below the required standard he was unable to have his proffered psychological opinion evidence admitted. Furthermore, Trial

Counsel failed to even recognize the defense offered by the statistical evidence proving underage girls similarly situated with Petitioner simply do not commit double parricide. On top of all of the above Trial Counsel failed to provide the defense fingerprint expert with the required information, or elicit exculpatory testimony.

11. In Murphy v. State,¹⁴³ Idaho 139, 139 P.3d 741, like in the present case, Trial Counsel was presented critical discoverable information on the eve of trial. Trial Counsel in Murphy, like Trial Counsel in the underlying criminal prosecution made a choice, based on inadequate preparation, not to seek a continuance to further investigate and prepare. In Murphy, Trial Counsel learned that the State's pathologist had changed his opinion regarding cause of death, from indeterminate to homicide. Trial Counsel had no rebuttal witness but proceeded to trial. *Id* at 749.

Here, Trial Counsel learned just prior to trial, of the State's Forensic expert, Rod Englert's, change in opinion, proffering a crime scene re-enactment placing the pink robe, found at the crime scene, worn backward by Petitioner during the shootings. Likewise, it was learned only on the eve of trial, the Prosecution's intention to offer testimony that a comforter that had been discarded covered the head of Diane Johnson at the time of the shooting. Furthermore, because of late disclosure of the State's Forensic Reports, and access to the physical evidence for purposes of testing, Trial Counsel failed to properly prepare for admission into evidence of its forensic tests. In other words, Trial Counsel's offer of rebuttal forensic shooting tests was rejected by the trial court because of inadequate preparation. Trial Counsel failed to recognize the problems or need to request a continuance because he failed to diligently prepare. The Murphy Court, on facts weaker than those before this Court, reversed summary dismissal, and remanded

with instructions to provide funding to obtain a forensic pathologist to support her claim of ineffective assistance of counsel. Had lead Trial Counsel not incompetently performed there is a reasonable probability the outcome at trial would have been different.

In State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975) the Supreme Court of Idaho reversed and remanded denial of post-conviction relief when Trial Counsel failed to offer evidence of a tape favorable to Petitioner that should have been known, but for unpreparedness. The Court presented a lengthy description of the meaning and importance of adequate preparation by trial counsel.

Given the complexities of the interaction between the prosecution function and the rights of the criminal defendant as is evident in this case, adequate preparation must be considered to be an integral element of the defense counsel's role in the adversary process. Adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge." *Moore v. United States*, 432 F.2d 730, 735 (3d Cir. 1970). Without adequate preparation, defense counsel cannot properly discharge his advocate's duty. The ABA Standards furnish a guideline to the nature and the extent of the duty to investigate:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty." ABA Standards, "The Defense Function", § 4.1 (1971).

Tucker at 10-11. Trial Counsel for Tucker failed to interview, or otherwise inquire of, police officers and agents involved in the sting operation resulting in Tuckers arrest. The Court concluded that the tapes (which were later inadvertently erased and not available for review) were not discovered because of inadequate pre-trial investigation. Id at 11-12.

In the case before the Court Trial Counsel, like in the Tucker case, simply failed to diligently investigate and prepare the case. It is believed that Trial Counsel Pangburn failed to interview any witnesses, and it is known that he failed to even read the witness note books prepared on his behalf. The specific factual circumstances of each allegation of error are recited in Paragraphs 16 and 19, together with subparts thereof, of Petitioner's First Amended Petition for Post-Conviction Relief, and need not be repeated here. Had trial counsel known the case, the facts and the law, a motion for continuance would have been filed upon receipt of critical discovery at the last minute. Alternatively, competent counsel would have anticipated the need to present expert testimony relating to comforters, ballistics and blood spatter and provided the proper foundation for admission of the shooting /blood spatter experiments.

FAILURE TO ADEQUATELY INVESTIGATE AND CROSS-EXAMINE STATE WITNESSES

12. In Milburn v. State, 130 Idaho 649, 946 P.2d 71 (1997) the Idaho Court of Appeals reversed summary dismissal of a Petition for Post-Conviction Relief due to Trial Counsel's failure to adequately investigate and cross-examine witnesses regarding inconsistent statement and failure to present exculpatory evidence. The prosecution relied on a three (3) prong theory of proof, (1) ballistics; (2) Defendant was last person seen with victim and (3) Defendant made admission. The Court held that the right to a diligent and conscientious advocate was violated when Trial Counsel failed; to present evidence that the Defendant was not the last person seen with the victim before his death; failed to impeach witness, who testified that Defendant admitted killing, with inconsistent prior statements; and to present evidence of another's admission to the crime. The Court

The general statement of law relating to deference to informed strategic decision of trial counsel, and the notable exception, applicable here, was recited by the Milburn Court. "...a court ordinarily will not second-guess *informed* strategic and tactical choices made by trial counsel. However, when counsel's trial strategy decisions are made upon the basis of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation, the defendant may well have been denied the competent assistance of counsel. Moreover, even errors in strategy can be so grave that they represent circumstances in which an issue of ineffective assistance exists" Milburn at 658.

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR POST-CONVICTION RELIEF

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

13. A defendant is constitutionally entitled to the effective assistance of counsel on a direct appeal as of right. Evitts v. Lucey, 469 U.S. 387, 394, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). The test to evaluate ineffective assistance of counsel on direct appeal is the same two prong analysis used with trial counsel, that (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the result would have been different. Mitchell v. State, 132 Idaho 274, 277, 971 P.2d 727. (1998) citing Aragon v. State, 114 Idaho at 764-65, 760 P.2d at 1180-81.

The Idaho Court of Appeals in Mintun v. State, 168 P.3d 40 (ID 2007) quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986) stated "Only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." The Court emphasized the difficulty in demonstrating that appellate counsel was incompetent for failing to raise a claim. The Court cited Smith v. Murray, 477 U.S. 527, 106 S.Ct. 2661 (1983) for the proposition that the "process of winnowing out the weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." Mintun.

Although rare, Idaho Court's have remanded to allow direct appeal issue relief due to ineffective assistance of appellate Counsel. State v. Ayala, 129 Idaho 911; Matthews v. State, 122 Idaho 801. The Supreme Court of Idaho in Mitchell, found ineffective assistance of appellate counsel, but refrained from reversing, determining that prejudice had not been established. Mitchell v. State, 132 Idaho 274, 277, 971 P.2d 727.

(1998) The Court held Mitchell did not show a reasonable probability that the result of the appeal would have been different but for Counsel's errors. This followed the District Court's grant of relief and legal conclusion of prejudice, but absence of Findings of Fact. The Court does not provide specifics regarding "serious deficiencies in the appellate brief," therefore it is difficult to discern the nature of Appellate Counsel's omissions.

In the current case, analyzing the issues chosen for appeal under the "ignored issues that are clearly stronger than those presented" standard, articulated by the Mintun Court, Appellate Counsel unreasonably chose to limit the issues presented on appeal. Appellate Counsel presented the argument that because aiding and abetting was not charged in the charging document, the district court's instruction to the jury on aiding and abetting constructively amended the charging document and resulted in a fatal variance. Appellate Counsel inexplicably failed to raise the stronger argument that insufficient evidence was presented at trial to support giving the aiding and abetting instruction. Furthermore, Appellate Counsel chose to abandon a persuasive argument that Petitioner's statements to law enforcement, after she had unequivocally invoked her right to counsel in writing, should have been suppressed.

On September 28, 2004 Petitioner's Trial Counsel filed a Memorandum in Support of Motion to Suppress Defendant's Statements to Law Enforcement Personnel, which was ultimately adversely and erroneously ruled on by the Court on December 23, 2004. The memorandum clearly argues for suppression of each and every instance where Petitioner made statements to police and the legal basis for suppression. The issue was well preserved for appellate review, yet Appellate Counsel abandoned the argument to

Petitioner's prejudice. The Court In Interest of Doe, 130 Idaho 811 (Ct. App. 1997) reiterated,

The issue whether *Miranda* warnings had to be given prior to an interrogation and the issue whether a confession was voluntary are separate and distinct, stemming from different constitutional provisions. The requirement of *Miranda* warnings is based upon the Fifth Amendment privilege against self-incrimination. *Miranda*, 384 U.S. at 463-469, 86 S.Ct. at 1621-1625. It is operative whenever the person being interrogated actually is in custody or is subjected to a restraint on his liberty of a degree associated with a formal arrest. *New York v. Quarles*, 467 U.S. 649, 655, 104 S.Ct. 2626, 2631, 81 L.Ed.2d 550 (1984); *California v. Beheler*, 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983). The doctrine disallowing the use of involuntary confessions, on the other hand, is grounded in the Due Process Clause of the Fourteenth Amendment, and it applies to any confession that was the product of police coercion, either physical or psychological, or that was otherwise obtained by methods offensive to due process. *Miller v. Fenton*, 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985); *Oregon v. Elstad*, 470 U.S. 298, 304, 105 S.Ct. 1285, 1290, 84 L.Ed.2d 222 (1985); *Haynes v. Washington*, 373 U.S. 503, 514-515, 83 S.Ct. 1336, 1343-1344, 10 L.Ed.2d 513 (1963).

The Court set out "the objective test for determining whether an adult was in custody for purposes of *Miranda*, giving attention to such factors as the time and place of the interrogation, police conduct, and the content and style of the questioning, applies also to juvenile interrogations, but with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult." In Re Doe, at 818. The Court held that the child was in custody and the statements suppressed. The analysis here is strait forward, Petitioner was without question in custody, during all police interrogations, for purposes of *Miranda*, under the Doe objective test. The second inquiry is whether Petitioner was given and asserted her right to Counsel. When Counsel has been retained and unequivocally, in writing, invoked Petitioner's right to remain silent how can there be a question?

Abundant law indicated that the variance argument was a loser. Even the Supreme Court took special notice of the absence of the insufficiency of the evidence to support the aiding and abetting instruction argument. State v. Johnson, 188 P.3d 912, 188 P.3d 912 (ID 2008) FN1. "On appeal, Johnson does not argue there was insufficient evidence to support the giving of the aiding and abetting instruction."

An intent reading of the law would have warned Appellate Counsel not to pursue the variance argument. In State v. Chapa, 127 Idaho 786, 906 P.2d 636 (Ct. App. 1995) contains the following guidance,

This Court has previously approved of a jury instruction on accessory liability in circumstances which, at first blush, may seem indistinguishable from the case before us. In State v. Wheeler, 109 Idaho 795, 711 P.2d 741 (Ct.App.1986), the information alleged that Wheeler personally shot and killed the deceased, and the State presented evidence to support that theory. Based upon additional evidence that Wheeler had been accompanied by another man who could have been the one who fired the weapon, the district court instructed the jury that it could also find Wheeler guilty of aiding and abetting the murder. On appeal, Wheeler argued he had not been given notice that he could be found guilty of aiding and abetting the offense. This Court rejected Wheeler's argument. We first noted that I.C. § 19-1430(fn3) abolishes any distinction between principals and accessories and makes all parties involved in the commission of a crime culpable as principals. Wheeler, 109 Idaho at 796, 711 P.2d at 742. We then acknowledged the Idaho Supreme Court's decision in State v. Ayres, 70 Idaho 18, 211 P.2d 142 (1949), holding that where the evidence showed the defendant was an accessory to the charged crime, there was not a fatal variance between the proof at trial and the allegations of the information charging the defendant as a principal. Relying upon the Ayres rationale, this Court held that, "if an accused is fully advised of the acts he is charged with committing, he is presumed to know that he would be a principal and guilty as such whether he directly committed the acts charged or aided and abetted in their commission by another." Wheeler, 109 Idaho at 796, 711 P.2d at 742, quoting Ayres, 70 Idaho at 27-28, 211 P.2d at 147.

The key distinguishing factual feature in Wheeler and Chapa from the present case is that evidence of aiding and abetting was part of the case. In Wheeler, not only did accomplices testify inconsistently about who committed the murder, the defense argued that an uncharged accomplice was the actual shooter. Wheeler at 797. The Court ruled,

in response to an argument that insufficient evidence was presented, "There is evidence of encouragement. There is evidence of the provision of a weapon, and there is evidence that can be read as even participating in a cover-up..." The Court concluded the aiding and abetting instructions were consistent with the evidence presented at trial. In the present case there was absolutely no affirmative evidence that Petitioner encouraged, aided or abetted another in commission of the crime.

In State v. Howley, 128 Idaho 874, 920 P.2d 391 the Supreme Court of Idaho reversed the trial court and remanded the case finding insufficient evidence to support a jury instruction of necessity. The Howley Court cited State v. Eastman, 122 Idaho 87, 831 P.2d 555 (1992), for the proper standard in determining whether sufficient evidence is present to support a jury instruction. The Court "...adopted a four part analysis to determine whether a requested jury instruction was properly denied: (1) identify the specific elements necessary for the requested instruction; (2) define the statutory elements, or as in this case, the common law elements of the requested instruction; (3) consider the evidence presented to determine whether such evidence supports the requested instruction; and (4) if the requested instruction is not supported by the evidence, the court must reject the requested instruction. Eastman, 122 Idaho at 89-90, 831 P.2d at 557-58."

According to the Court in State v. Mitchell, 195 P.3d 737, 742 (ID 2008),

In order to be convicted under I.C. § 18-204 for aiding and abetting the commission of a crime, a person must act in such a way as to facilitate, promote, encourage, solicit, or incite the actions of the crime. Aragon, 107 Idaho at 364, 690 P.2d at 299; State v. Holder, 100 Idaho 129, 132, 594 P.2d 639, 642 (1979), *overruled on other grounds by State v. Humphreys*, 134 Idaho 657, 8 P.3d 652 (2000); Howard v. Felton, 85 Idaho 286, 297, 379 P.2d 414, 421 (1963); Ilorejs, 143 Idaho at 263, 141 P.3d at 1132. However, mere knowledge of a crime or

assent or acquiescence in its commission does not create accomplice liability through aiding and abetting. *State v. Randles*, 117 Idaho 344, 347, 787 P.2d 1152, 1155 (1990), *overruled on other grounds by Humphreys*, 134 Idaho 657, 8 P.3d 652. Aiding and abetting contemplates a sharing by the aider and abettor of the criminal intent of the perpetrator. *Howard*, 85 Idaho at 297, 379 P.2d at 421; *State v. Hickman*, 119 Idaho 366, 367, 806 P.2d 959, 960 (Ct. App. 1991). Thus, the aider and abettor must have the requisite intent and have acted in some manner to bring about the intended result. *State v. Gonzalez*, 134 Idaho 907, 909, 12 P.3d 382, 384 (Ct. App. 2000).

Under the four part test, the elements of aiding and abetting are known and include a requirement that the person charged facilitate, promote, encourage, solicit or incite the actions of the crime. Furthermore, mere knowledge of the crime or assent or acquiescence is not enough. In the present case, at most, the evidence at trial may lead to a reasonable inference that Petitioner had some knowledge of the crime. However, there is simply no evidence in the record of facilitation, promotion, encouragement, solicitation or incitement by Petitioner. Not one scintilla. Therefore, Appellate Counsel's conduct fell below the objective standard of reasonableness. If the issue of sufficiency of the evidence to support the aiding and abetting instruction there is a reasonable probability that, but for counsel's errors, the result would have been different.

NEWLY DISCOVERED EVIDENCE

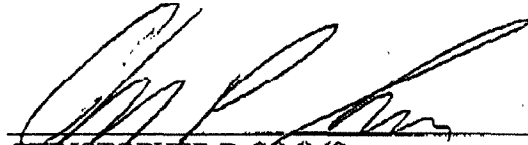
14. Since the date of conviction herein new evidence has been discovered. According to the affidavit of Robert Kerchusky, (and documents discovered in the record by Post-Conviction Counsel) the latent fingerprint technician was not given all of the latent print cards, but only poor quality copies of same. The fingerprint technician was given the actual cards when it was too late to run a search for match, prior to her testimony. Based upon this information it was gleaned that at least seven (7) latent prints found at the scene met the criteria for AFIS, WIN and FBI data base search. Finally, it is now conceded by

probability of a different verdict. The facts of the case at hand are different. Here, we have newly discovered evidence that goes directly to the heart of the case.

In Grube Justice Kidwell dissented from the majority, concluding that his confidence in the jury verdict had been undermined, based on withheld evidence, doctored police logs, evidence that suspiciously appeared after several years, the absence of convincing direct proof. Grube at 31. The facts of the present case must lead to the same conclusion. Curiously it appears that the same lead investigator, Scott Birch, was involved, as lead investigator, in both cases. *Id* at 33. Here, we have clearly false and misleading testimony regarding latent fingerprints offered at grand jury, then again during trial, late disclosure of critical evidence, failure by the State to diligently use its best investigative tools, and now discovery of critical new fingerprint evidence. Petitioner cries out for a new trial.

WHEREFORE, Petitioner prays this honorable Court enter an Order setting aside, reversing and vacating the verdict, judgment and sentence of this Court in State v. Johnson Case No. CR-2003-1820 and remanding the case for new trial or alternatively, vacating the order, decision and opinion of the Supreme Court of Idaho in State v. Johnson No. 33312 affirming the judgment of this Court and permitting resubmission of the direct appeal on allegations of error in denying Motion to Suppress Defendant's Statements to Law Enforcement Personnel and in allowing the aiding and abetting instruction despite a lack of sufficiency of evidence to support such and instruction; or alternatively for such other and further legal and/or equitable relief as the Court deems just and proper under the circumstances.

CHRISTOPHER P. SIMMS, ATTORNEY AT LAW



CHRISTOPHER P. SIMMS
ATTORNEY FOR PETITIONER

3.16.09
DATED


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of MARCH, 2009, a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF AMENDED PETITION FOR POST-CONVICTION RELIEF was delivered to the Office of Attorney General & Special Prosecuting Attorneys, Attn: Jessica Lorello Facsimile number 208.854.8074, PO Box 83720, Boise, Idaho 83720-0010 and The Office of the Blaine County Prosecuting Attorney Facsimile number 208.788.5554, 201 Second Avenue South, Ste. 100, Hailey, Idaho 83333:

_____ US Mail

_____ Hand Delivery

 / Via facsimile 208.854.8074 & 208.788.5554


CHRISTOPHER P. SIMMS